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Vol. I

TRANSCRIPT OF RECORD

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Supreme Court of the United States

OCTOBER TERM, 1937

No. 798

THE DENVER UNION STOCK YARD COMPANY,
APPELLANT,

vs.

THE UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF COLORADO

FILED FEBRUARY 14, 1938.

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., MARCH 2, 1938.

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[fol. a]

IN UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLORADO, SITTING AT DENVER

Be it remembered, that heretofore, and on, to wit, the ninth day of March, A. D. 1937, came The Denver Union Stock Yard Company, by Robert G. Bosworth, Esquire, its solicitor, and filed in said court its petition; and sued out of and under the seal of said court a writ of subpœna against United States of America and Secretary of Agriculture.

And the said petition, with Exhibits A, B and C attached thereto, is in words and figures as follows, to wit:

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO

THE DENVER UNION STOCK YARD COMPANY, a Corporation, *Plaintiff*, vs. UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, *Defendants*.	IN EQUITY No. ______

PETITION

ROBERT G. BOSWORTH,
NORMAN A. HUTCHINSON,
Solicitors for Petitioner.

PERSHING, NYE, BOSWORTH AND DICK,
Of Counsel.

THE W. H. KISTLER STAT'Y CO., DENVER

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IN THE

DISTRICT COURT OF THE UNITED STATES

FOR THE DISTRICT OF COLORADO

THE DENVER UNION STOCK YARD COMPANY, a Corporation, *Plaintiff*, vs. UNITED STATES OF AMERICA AND SECRETARY OF AGRICULTURE, *Defendants*.	IN EQUITY No. ....

PETITION

TO THE HONORABLE, THE JUDGES OF THE DISTRICT COURT OF THE UNITED STATES, SITTING IN AND FOR THE DISTRICT OF COLORADO:

Your petitioner, The Denver Union Stock Yard Company, files this, its petition in equity against the United States of America and the Secretary of Agriculture of the United States, (hereinafter called the Secretary), for the purpose of suspending, restraining the enforcement and operation of, enjoining, setting aside and annulling a certain order issued by the Secretary through his Acting Secretary, Honorable Harry L. Brown, entered on the 18th day of February, 1937, in a proceeding then pending before said Secretary, conducted by the Bureau of Animal Industry, entitled: "*The Secretary of Agriculture vs. Denver Union Stock Yard Company, Respondent,* Docket No. 450." For purposes of brevity, the Secretary and the Acting Secretary aforesaid are herein collectively referred to as "the Secretary."

As grounds for said petition and for its cause of action herein, petitioner alleges and respectfully shows:

I.

That The Denver Union Stock Yard Company is a corporation duly organized and existing under and by virtue of the laws of the State of Colorado, with its principal office and place of business in the City and County of Denver, wherein it maintains, owns and operates a stockyard conducted and operated for compensation or profit as a public market, consisting of pens and other enclosures and their appurtenances into which live cattle, sheep, swine, horses, mules or goats are received, held or kept for sale or shipment in commerce, and having an area in excess of 20,000 square feet, exclusive of runs, alleys or passageways; that said stockyards has heretofore been designated as a public stockyards by the Secretary under the provisions of the Act of Congress known and cited as "Packers and Stockyards Act, 1921". (42 Stat. L. 163; 7 U. S. C. A. Sec. 181 et seq.).

II.

That the United States of America is made a defendant herein pursuant to said Packers and Stockyards Act, 1921, and the terms and provisions of the Commerce Court Act (36 Stat. L. 539) approved June 18, 1910, and the District Court Jurisdiction Act, being part of the Urgent Deficiency Appropriation Act, approved October 22, 1913 (38 Stat. L. 219-220; 28 U. S. C. A. Sec. 41 et seq.), and amendments thereof; that the Secretary is made a defendant herein in pursuance of the same Act and particularly because the order herein complained of was made and entered in the name of said Secretary by said Harry L. Brown, as Acting Secretary of Agriculture, purporting to act pursuant to said Packers and Stockyards Act, 1921.

III.

That pursuant to and in full conformity with the requirements of said Packers and Stockyards Act, your petitioner filed with the Secretary and did print and keep open to public inspection in its stockyard, schedules showing all rates and charges for stockyard services furnished by peti-

tioner in its said stockyard, said schedule as originally filed, being designated as Tariff No. 1; that thereafter and from time to time, in full conformity with the said Act and pursuant to its provisions other and different tariffs have been filed and kept open to public inspection together with supplements thereto from time to time issued by petitioner; that at the time of the rate investigation and of the hearing conducted by the Secretary as hereinafter mentioned, the tariff showing the rates and charges then in effect at the stockyard of petitioner in Denver, Colorado, together with the supplements and amendments thereto, was and is known and designated as Tariff No. 3 and Supplements Nos. 1 to 10, inclusive; that under the rules and regulations of the Department of Agriculture, not more than ten supplements can be attached to any tariff and accordingly on August 15, 1935, effective August 31, 1935, Tariff No. 4 was issued, which said tariff did not change in any manner the marketing or other charges contained in said Tariff No. 3, Supplements Nos. 1 to 10, inclusive; that thereafter, and from time to time, there have been issued by petitioner, Supplements Nos. 1 and 4, affecting changes only under charges for feed at said stockyards, which charges of necessity fluctuate with the market on feed, and that Supplements Nos. 2, 3, 5 and 6 to said Tariff No. 4 have been issued by petitioner, the last of which supplements was effective January 17, 1937, which said supplements affect changes which are either not involved in this proceeding or which have been adopted by the Secretary in his said Findings and Order; that except for the fluctuations in feed and bedding charges carried into the rates on account of market fluctuations, the court may deem and treat the rates now existing at petitioner's stockyard as identical with those in effect at the time of the said hearing before the Examiner so far as any matters herein involved and complained of are concerned.

IV.

That on the 8th day of November, 1934, the Secretary issued and served upon petitioner, a document entitled "Or-

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der of Inquiry and Notice of Hearing under the Packers and Stockyards Act 1921, as Amended'' notifying petitioner that on March 18, 1936, a hearing would be held on the Secretary's motion, to determine the lawfulness of any and all rates and charges of petitioner and of any rule, regulation or practice affecting said rates and charges, or whereby any stockyard service is rendered by respondent without making a lawful charge therefor; that thereafter, pursuant to an order of the Acting Secretary of Agriculture, the hearing required by said notice was postponed until June 3, 1935.

V.

That the authority of the said Secretary and of his employes and agents, with respect to the regulation of rates and charges of public stockyards, and with respect to said order hereinafter set forth and herein complained of, is contained in and limited by the Packers and Stockyards Act, 1921, as amended, being 42 Statutes at Large, 163, 7 U. S. C. A. Section 181 et seq., and particularly Title III thereof.

VI.

That on said 3rd day of June, 1935, pursuant to the notice and orders aforesaid, said proceeding or rate investigation known as Bureau of Animal Industry, Docket No. 450, entitled *''Secretary of Agriculture v. Denver Union Stock Yard Company''* (hereinafter sometimes referred to as Docket No. 450) was commenced before an Examiner, who is an employee of the Department of Agriculture and an attorney thereof, purporting to act pursuant to said notice and orders; that said hearing continued to and including the 3rd day of July, 1935; that during the conduct of said hearing the Examiner received testimony offered by witnesses for the defendant herein; that thereafter your petitioner offered evidence offsetting and contradicting the evidence of defendants. Petitioner further shows that it was agreed to and stipulated between the petitioner and defendants herein at said hearing that upon any adverse ruling of the Examiner upon the admissibility of any evi-

dence, the party against whom the ruling went might have and thereafter urge an exception to such adverse ruling, without the necessity in each instance of reserving the same of record; that the testimony so taken and the rulings thereon of the Examiner have been caused to be transcribed by employes of the Department of Agriculture, which said transcript known and designated as the official transcript, together with all exhibits admitted in evidence, will be presented to this Court at the time this petition is heard.

VII.

That thereafter and on the 28th day of October, 1936, petitioner received from the Secretary of Agriculture, his recommendations as to proposed proceedings, findings of fact and order in said Docket No. 450; that thereafter and within the time and in the manner permitted by the rules and regulations of the Secretary in such cases made and provided, petitioner filed its exceptions to said proposed report; and that no exceptions were filed thereto by the Secretary or by the Department of Agriculture of the United States, or by or on his, its or their behalf or by or on behalf of any other person, firm, department or agency other than petitioner. A copy of said proposed proceedings, findings of fact and order, together with the exceptions of your petitioner thereto, are filed herewith, marked for identification Exhibits A and B respectively and incorporated herein by reference as fully as herein set out at length. For the convenience of the court and because of the size thereof, said Exhibits A and B have been separately printed. Petitioner states that it has indicated on Exhibit A all material differences between the proposed findings, Exhibit A and the final order, Exhibit C, hereinafter described, such changes being indicated by italicized type and by notes.

VIII.

That on January 7, 1937, pursuant to request made in exceptions, Exhibit B, oral argument was had before the Hon. Harry L. Brown, Acting Secretary of Agriculture of

the United States of America, at Washington, D. C. That on February 17, 1937, the Secretary of Agriculture did make and enter in Docket No. 450, his Findings, Conclusion and Order (hereinafter for convenience called "Findings and Order"), a copy of which said Findings and Order is filed herewith, marked for identification as Exhibit C and incorporated herein by reference as fully as though herein set forth at length. For the convenience of the court, Exhibit C has been separately printed.

IX.

That in said Findings and Order, all as will more fully appear in said Exhibit C, the Secretary found and concluded that the rates and charges in effect at petitioner's stockyards, contain rates and charges which are unreasonable and unjustly discriminatory and did order your petitioner on and after thirty days from February 17, 1937, not to publish, demand or collect any rate or charge for the furnishing of any stockyard service in excess of the rates and charges found and determined by the Secretary in said Findings and Order, Exhibit C, to be just and reasonable for the furnishing of such service, and did order your petitioner at least ten days prior to the effective date of said order to publish, give notice and file with the Secretary of Agriculture, a schedule effective on said thirtieth day showing the rates and charges for stockyard services furnished by petitioner, and all rules and regulations changing, affecting or determining such rates or charges and did require and order that no rate or charge so shown shall be in excess of the rate or charge determined in said Findings and Order of the Secretary to be just and reasonable as aforesaid; that if petitioner fails to comply with the terms and conditions of said Findings and Order within the time and times prescribed therein, petitioner will be subjected to heavy and severe fines and penalties as provided in said Packers and Stockyards Act, 1921, as amended, and in addition thereto, petitioner will be subjected to or required to bring many and vexatious suits by or against shippers of livestock to

the livestock market conducted by petitioner at its stockyards in Denver, Colorado, arising out of the payment or non-payment of the charges aforesaid.

X.

That the finding of the Secretary and his said order based thereon that the existing rates and charges of petitioner for stockyard services at its stockyards are unreasonable and unjustly discriminatory, is not supported by any evidence of record or by substantial evidence, is contrary to the evidence and contrary to the weight of the evidence taken by the Examiner in said proceeding, Docket No. 450; that the rates and charges prescribed by the Secretary insofar as the same differ from and are lower than the existing rates of petitioner at its said stockyards, are not supported by any evidence of record, are contrary to the evidence and to the weight of the evidence, are arbitrary, unreasonable and confiscatory, and are unjustly discriminatory between patrons of petitioner and shippers of livestock to the livestock market conducted by petitioner at its said stockyards in Denver, Colorado; that if the schedule of rates prescribed by the Secretary and said order of the Secretary be not set aside and annulled, your petitioner will be deprived of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

XI.

That said Findings and Order of the Secretary is contrary to law, unsupported by substantial evidence, contrary to the evidence and to the weight of the evidence, confiscatory, arbitrary, unreasonable and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States in the following additional particulars and for the following reasons, to-wit:

(a): That in and by said Findings and Order, the Secretary purports to find, among other things, the value

of the property of petitioner for rate making purposes and thereafter fixes a certain percentage of such value so found by him as a rate of return to petitioner upon and from its said property, which said rate of return the Secretary finds will be just and reasonable for the future; that he then adjusts the income and expense of petitioner as shown by petitioner's books, excluding items of expense actually paid and incurred by petitioner, adjusting depreciation rates, excluding properties of petitioner from the rate base as found by him without excluding the income derived from such properties and in many other ways altering, adjusting and changing the income and expense of petitioner; that said adjustments are arbitrary, beyond the power of the Secretary to make, contrary to the evidence and to the weight of the evidence, and operate to confiscate the property of petitioner, contrary to law as aforesaid. Petitioner alleges that upon the basis of said pretended valuation and restatement, the Secretary found that the net income of petitioner, arbitrarily, unreasonably and unlawfully adjusted and determined as aforesaid, is in excess of the amount found by the Secretary to be just and reasonable for the future, and therefore, by virtue of such purported excess the Secretary found existing rates to be unjust and unreasonable; and petitioner further alleges that by reason of the fact that said adjustments of income and expense and exclusions of property as aforesaid, are arbitrary, unreasonable and unlawful, the finding and conclusion of the Secretary and his order based thereon that the existing rates of petitioner are unreasonable and unjustly discriminatory, is invalid, unsupported by evidence, contrary to the evidence, unlawful, confiscatory and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(b): That in and by said Findings and Order, the Secretary has excluded from the rate base of petitioner, the value of 8.985 acres of land together with the structures thereon, said structures consisting of all of the railroad

trackage of petitioner, the loading and unloading docks, the loading and unloading chutes and pens, a yardmaster's office and a trackman's tool house, all upon the purported reason that such land, together with the said structures thereon, is used in the rendition of transportation services as distinguished from stockyard services and the Secretary accordingly finds that said land and structures are not used and useful in the rendition of services for which petitioner's rates are charged. The Secretary does not find that petitioner owns more trackage than is necessary for the handling of the livestock coming to its Yards or that the said facilities for the loading and unloading of livestock from cars are unnecessary or excessive in any way or to any degree. Petitioner shows and avers that all said structures and the land upon which they are situate, to-wit: 8.985 acres, is owned and used by it in the receiving, marketing, feeding, watering, holding, delivery, shipment or handling of livestock in commerce and are necessary therefor; that said structures and lands are stockyard facilities within the definition contained in said Packers and Stockyards Act, 1921, as amended, used and useful in the rendition of stockyard services for which rates are charged; that the fair and reasonable value of said 8.985 acres of land is $136,850.00; that the present fair value for rate making purposes of said structures is $128,059.68 or a total fair value of said land and structures of $264,909.68; that the finding of the Secretary excluding the value of said land and structures from the rate base of petitioner is contrary to law, contrary to the evidence and is arbitrary.

(c): That the Secretary excluded from the rate base of petitioner 2.633 acres of land and the structures thereon for the reason that said land and structures are used chiefly for purposes of the annual stock show and the Secretary finds in said Findings and Order that said land and structures are not used and useful in the rendition of stockyard services. Petitioner shows that the uncontradicted evidence introduced before the Examiner, whereon the Findings and Order of the Secretary, if lawful, must be based,

established that said annual livestock show benefits the industry as a whole; that livestock in large quantities is shipped to petitioner's stockyards for or on account of said show; that buyers in large numbers from widely separated sections of the United States become permanent buyers on the market; that livestock in large volume is bought and sold at said show and in petitioner's yards on account of said show, and that said land and said structures are used in the buying and selling of livestock in commerce and are stockyard facilities within the terms and provisions of said Packers and Stockyards Act, 1921, as amended; that the true, fair and reasonable present value of said land is $52,660.00 and of said structures, not less than $208,043.00, or a total value of such land and structures of not less than $260,703.00; that the finding of the Secretary excluding the said property and the value thereof from the rate base of petitioner herein is contrary to law, is unsupported by the evidence, is contrary to the evidence and to the weight of the evidence, is arbitrary and an abuse of power by the Secretary and deprives petitioner of not less than $260,703.00 in value of its property, without due process of law and in violation of the Fifth Amendment to the Constitution of the United States; that in further substantiation of the arbitrary and unlawful nature of the Secretary's said finding, petitioner shows that the uncontradicted evidence introduced before the Examiner in said proceeding, Docket 450, establishes that the average earnings of petitioner for the five year period under review due directly to and derived from the said annual stock show is $12,240.97; (Respondent's Ex. 13-years 1930 to 1934 incl.) that although the Secretary, arbitrarily and unlawfully as aforesaid, has excluded the value of said lands and structures from the rate base and has excluded certain income and expense connected therewith in determining what he deems to be the net income of petitioner for rate making purposes, the Secretary has not excluded from said income said item of $12,240.97 aforesaid; that it is axiomatic in rate-making, that if property be excluded from the rate base because not used and useful in the rendition of services for which the

rates are charged, all income derived from or on account of said property and all expense incident thereto must also be excluded in determining the fair and reasonable rates to be charged for such services; and petitioner avers that even if the theory of the Secretary that the land and structures chiefly used in the conduct of livestock shows are not stockyard facilities within the meaning of the Packers and Stockyard Act, 1921, as amended, nevertheless, the finding of the Secretary in this matter is arbitrary and unlawful and operates to deprive petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(d): That the finding of the Secretary contained in paragraph 115 of said Findings and Order, that the fair value of petitioner's used and useful land is $536,825.00 is contrary to the evidence and is unsupported by any substantial evidence of record; that the values so found by the Secretary and particularly those allocated to Zones 1, 2 and 9 as stated in the tabulation contained in said paragraph have been and are arbitrarily determined, are without substantial support in the evidence, are contrary to the evidence and to the weight of the evidence; that the sole testimony concerning the value of petitioner's lands offered by the Secretary in said proceeding, Docket 450, was by witness Zelinski, a regular and permanent employee of the Department of Agriculture who admitted in evidence that prior to said proceeding he had never appraised any land or property in Denver or its vicinity, or at any place west of Omaha, Nebraska, that he spent two weeks on the appraisal of the 130.57 acres of land assembled by petitioner in the fifty years of its existence and owned and held by it for stockyard purposes, that the evidence of petitioner on the value of its said lands and introduced before the Examiner in said proceeding, was given by three appraisers sitting as a board of appraisers, that each and all of said appraisers were and are men actively engaged for periods of twenty to thirty-five years in the appraisal, purchase, sale and handling of industrial property in Denver, and fa-

miliar for a like period with the value of the lands of petitioner and with the value of lands in the vicinity of petitioner's said property, and with the factors affecting said values; that the fair and reasonable value of petitioner's said lands as found by said appraisers is $1,645,552.50 and petitioner so alleges the value to be; that the fair value of the land of petitioner found by the Secretary to be used and useful is $1,213,333.00 to which must be added the fair value of the excluded lands, the exclusion of which is complained of in paragraphs B and C above, or a total fair value of petitioner's used and useful land of $189,510.00; or a total value of $1,402,843.00; that the finding of the Secretary and the order based thereon is arbitrary, unsupported by substantial evidence, contrary to the evidence, contrary to the weight of the evidence and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(e): That in determining what the Secretary finds to be the fair and reasonable rates to be charged by petitioner for stockyard services, the Secretary purports to evaluate the property of petitioner, the total of such evaluation being the purported rate base of petitioner; that in addition to the unlawful and arbitrary determination of the value of the lands of petitioner as hereinabove complained of, the Secretary finds in paragraph 123 of his said Findings and Order, that the reproduction new value, less depreciation of the buildings, structures and equipment used and useful in the rendition of stockyard service is 80.545% of $2,118,960.00 or $1,706,717.14. That said finding of the per cent condition of petitioner's property is not supported by the evidence of record is contrary to the evidence and to the weight of the evidence and is arbitrary, and petitioner alleges and shows that the per cent condition of the buildings, structures and equipment of petitioner, used and useful in the rendition of stockyard services is not less than 84% nor more than 88.9% of the reproduction new cost thereof or not less than $1,779,927.24 or more than $1,883,756.33. That to the above figures must be added the

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fair and reasonable present value of the railroad trackage, loading and unloading docks, chutes and pens and of the stadium and other stock show properties, all wrongfully excluded by the said Secretary from the rate base as hereinabove set forth. That the finding of the Secretary deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(f): That in said Findings and Order and particularly at paragraph 155 thereof, the Secretary finds a reasonable rate of return on the fair value of petitioner's property to be 6½% of the pretended value unlawfully and arbitrarily found by the Secretary as aforesaid, and petitioner shows that the evidence in said proceeding docket 450 sustains a rate of return of not less than 6¾% upon the fair value of petitioner's property. That the finding of the Secretary herein complained of is arbitrary, contrary to the evidence and to the weight of the evidence and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(g): That on October 28, 1936, there was received by petitioner a copy of the proposed Findings, Conclusion and Order in Docket 450 being Exhibit A hereto attached, and petitioner was then advised by the Solicitor of the United States Department of Agriculture that twenty days was allowed for the filing of exceptions, if any, to said proposed findings. Petitioner shows said proposed findings, among other things, represented that the condition per cent of petitioner's structural property would be fixed at .84% (Exhibit A, paragraph 123) and that the rate of return, plus a so-called "cushion" would be fixed at slightly over 7% (Exhibit A, paragraphs 156 and 213), unless exceptions thereto by some party in writing be taken and filed as required by the Rules of Practice under the Packers and Stockyards Act, 1921, as amended, promulgated by the Secretary and rendered effective on September 28, 1936, and Petitioner further shows that no exceptions whatever to said

proposed findings were filed either by it or by the Bureau of Animal Industry, or by the Department of Agriculture, or by any party or person whatsoever; and petitioner avers that the action of the Secretary in decreasing the condition per cent of petitioner's structural property to 80.545% from 84% and by reducing the rate of return to 6½% from a net of slightly more than 7%, as fixed by said accepted findings is arbitrary and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(h): In said Findings and Order and at paragraph 137 thereof, the Secretary finds that adequate allowance for the element of going concern value has been included in the valuations of petitioner's land, structures and equipment and makes no separate allowance therefor. Petitioner alleges and shows that the Secretary has adopted throughout the valuations of government witness Zelinski, an employee of the Department of Agriculture; that said witness testified that he valued the land not as a stockyard but stripped of all improvements; that he valued the structural property on the basis of the unit component parts, that is to say, the cost of brick per thousand delivered on the ground; the cost of lumber likewise delivered on the ground and all other items and elements entering into the construction of the said improvement; that said witness testified that he did not value petitioner's property for the special use and in the special way it is being used by petitioner (Tr. 448); that no allowance whatsoever was made by the said witness, or by any other witness on behalf of the government on account of the going concern value of petitioner's property; that the fair going concern value of petitioner's property as established by the uncontradicted testimony of petitioner is not less than $325,500.00. And petitioner avers that the Findings and Order of the Secretary in failing to make any separate allowance for the going concern value of petitioner's property, and in failing to find that a going concern value of not less than $325,500.00 should be included in the rate base of petitioner, is arbitrary, contrary

to law, contrary to the evidence and to the weight of the evidence, and without substantial support in the evidence, and that the said finding deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(i): The Secretary finds in paragraph 198, and elsewhere, in his said Findings and Order, that a certain class of purchasers upon petitioner's market conducted at its stockyard in Denver, Colorado, which class of purchasers is commonly known as "yard traders", is rendered free service by the petitioner and finds that such free service is unjustly discriminatory and unreasonable, resulting in an increased charge upon shippers to the market and at paragraph 210, finds that petitioner's existing rates by reason of this fact are unjustly discriminatory. Petitioner shows that the evidence establishes without contradiction that the yard trader was and is charged the same rates and charges as any other seller of livestock on petitioner's market whenever such trader avails himself of and utilizes petitioner's market in the same manner as such other sellers; that no free service whatever is rendered to the yard trader; that the bulk of the yard trader's operations is as a buyer of livestock either for his own account or as an order buyer and agent of feeders; that in the operations of the yard trader as a buyer upon the market such trader is an essential part of the buying outlet of the said market, contracted for, desired and paid for by the shipper and seller and included in the marketing charge collected by petitioner under its tariffs. Petitioner further shows that to charge the yard trader for the privilege of buying upon the said market is unjustly discriminatory, in that one class of buyers is charged for such privilege while all other buyers, with the consent and approval of the Secretary, are permitted to buy livestock at petitioner's market without payment of any charge therefor; that any such charge as now ordered by the Secretary, if his said Findings and Order be sustained, is unjustly discriminatory against the shippers to petitioner's market and petitioner avers that the said finding of the Secretary is

arbitrary, contrary to the evidence and to the weight of the evidence, unlawful, constitutes an unwarranted invasion of the managerial function reserved by law to petitioner, is an abuse of power by the Secretary and is in excess of any power granted to him by the Packers and Stockyards Act 1921, places in petitioner's tariffs a charge which is unjustly discriminatory and which the Secretary well knows is impractical and cannot be collected; that said finding deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(j): The Secretary tabulates in paragraph 158 of his said Findings and Order, the expenses of respondent for the years 1930-1934 inclusive, and at item 71 of said tabulation shows the dues, donations and subscriptions made by petitioner during each of said years and the amount excluded by the Secretary and considered by the Secretary in each of said years; that in paragraph 164, the Secretary finds that said dues, donations and subscriptions during the said five year period have run between $3,000.00 and $4,000.00 a year and the Secretary finds that of such expenditures, only $325.00 should be covered into rates. Petitioner shows that in making said findings the Secretary has excluded actual expenditures of petitioner consisting of membership dues in the Denver Chamber of Commerce and other commercial organizations of like kind and character; tickets for the stock show given to employes; membership dues in the American Stockyards Association, an organization created at the behest of the government to formulate a code for the stockyards industry; charitable donations to the Denver Community Chest and other like items; membership dues in the Denver Livestock Exchange; employes' recreation teams and welfare expenses; donation to the American Red Cross and many other similar items; and petitioner avers that the dues, donations and subscriptions are not unreasonable in any particular or to any degree; that the finding of the Secretary is arbitrary, unlawful, beyond his power to make, constitutes an unwar-

ranted invasion of the managerial power and function reserved by law to petitioner, not subject to the veto of a public official and deprives petitioner of its property without due process of law in violation of the Fifth Amendment to the Constitution of the United States.

(k): That at paragraph 163 of said Findings and Order the Secretary finds that a reasonable allowance to be covered into rates on account of the expenses of hearings resulting from the enforcement of the Packers and Stockyards Act, 1921, is $100.00 per month or $1200.00 annually and petitioner shows that the uncontradicted evidence introduced before the Examiner in Docket 450 upon which the Secretary's said Findings and Order is purported to be based, establishes that the average annual expense of petitioner for the five year period, 1930 to 1934 inclusive is $8,786.76 or a total expenditure during said period of $43,933.80. Petitioner alleges that the expenses of this pending hearing including the expenses incurred incident to the proceedings, Docket 450, will not be less than $40,000.00; that this rate investigation, as well as the previous rate investigation of 1930, has been instituted by the Secretary upon his own motion and not upon the complaint of any shipper or patron on the market; that the said allowance of $100. per month, as made by the Secretary, is wholly inadequate to permit petitioner either to reimburse itself for expenditures forced upon it by the Secretary or to meet probable reasonable expenditures for said purposes in the future, and that the petitioner avers said finding of said Secretary is arbitrary, unsupported by the evidence and contrary to the evidence and is confiscatory.

(l): In paragraph 181 of said Findings and Order, the Secretary finds that nothing should be covered into rates on account of the Federal surtax on undistributed profits, stating as his reason for such finding that if the dividend policy of petitioner within the next few years is the same as it was in 1934, petitioner would not be subject to such tax. Petitioner shows and the uncontradicted evidence establishes that petitioner has outstanding a certain

issue of bonds in the aggregate principal amount of $1,500,000.00, under the terms of which petitioner must deposit annually, in a sinking fund for the retirement of said bonds, $30,000.00, but that such sinking fund payment must be made annually if petitioner is to keep its properties and be in position adequately to serve the livestock industry and the public; that earnings devoted to such sinking fund are not exempt from the payment of the surtax on undistributed profits; that said tax stands upon the same basis as other Federal taxes allowed and included by the Secretary; that even upon the net earnings permitted by the Secretary under rates and charges prescribed in said Findings and Order, the amount of such surtax on said $30,000.00 of sinking fund money is not less than $2,737.35; and petitioner avers that the finding of the Secretary is arbitrary, contrary to the evidence, contrary to law and deprives petitioner of its property without due process of law, in violation of the Fifth Amendment to the Constitution of the United States.

XII.

That in said order of the Secretary, being a part of said Findings and Order, Exhibit C hereto attached, petitioner is ordered on and after thirty days from the date of said order, to-wit: February 19, 1937, to cease and desist from making or collecting charges for yardage, feed and bedding at the existing rates, or at any rate other than that unlawfully found and determined by the Secretary, as aforesaid, to be just and reasonable in said Findings and Order, and that your petitioner is further ordered, at least ten days prior to the thirtieth day from the date of said order, to publish, give notice of and file with the Secretary a schedule effective thirty days from the date of said order showing all rates and charges for stockyard services, not, however, in excess of the rate or charge for any such service, determined unlawfully, as aforesaid, to be just and reasonable by the Secretary; that if your petitioner fails to comply with said order, it may be subject to prosecution and incur liability for penalties in an amount of Five Hundred Dollars for each

day and for each violation of said order, as against which liability your petitioner has and will have no adequate protection or remedy at law; that if your petitioner fails and refuses to publish said new schedule, or if under duress and in order to avoid said liability for penalties, it publishes and establishes the rates and charges specified in said schedule, and said rates and charges be thereafter found by this Court to be unlawful and void, your petitioner will be forced to bring a multiplicity of suits against shippers of livestock, large and small, many of whom are of doubtful financial responsibility and resident in states from the Missouri River west to the Pacific Coast; that if petitioner, under duress, as aforesaid, publish and establish the said rates and charges, it is possible that such rates and charges, even though subsequently held to be unlawful and void, would be and become the lawful rate and charge, so long as the same remain in effect and until the final orders of this Court, in which event petitioner would be without any legal means or right of collecting the difference between said rates as prescribed by said Secretary and petitioner's existing rates; that by reason of the aforesaid, if the order of said Secretary be not suspended, enjoined, set aside and annulled, and if, pending final determination herein, its enforcement be not temporarily stayed and suspended, your petitioner will suffer irreparable injury, for which it will be without adequate remedy or protection at law.

WHEREFORE, your petitioner prays:

1. That a writ of subpoena issue immediately out of and under the seal of this Court, and be directed to said defendants, the United States of America and the Secretary of Agriculture, requiring said defendants, on a day certain therein to be specified, to be and appear before this Court and answer this petition, but not under oath, answer under oath being hereby expressly waived.

2. That this Court direct that due and proper notice of this petition and proceeding issue and be served forthwith, by filing a copy hereof in the office of the Secretary of

Agriculture and in the Department of Justice, and elsewhere as may be required by law. (28 U. S. C. C. A. Sec. 41 (28) Secs. 43 to 48, inclusive.)

3. That a Court constituted as required by the Act of October 2, 1913 (28 U. S. C. A. Sec. 47) be convened, and that said Court so constituted and convened hear this petition upon due and legal notice to respondents and each of them.

4. That an interlocutory injunction be granted petitioner upon three days' notice to respondents and in the manner provided in the Act of October 22, 1913 (38 Stat. L. 220; 28 U. S. C. A. Sec. 47), staying and suspending the enforcement, operation or execution of the order of the Secretary of Agriculture of February 17, 1937, hereinabove complained of, for sixty days from the date of the order granting said interlocutory injunction, and that upon hearing of this application within said sixty day period a temporary injunction or restraining order be issued restraining the said Secretary or Acting Secretary of the Department of Agriculture, and all others acting for or on his or their behalf, from enforcing in any manner said order of February 17, 1937, pending final determination of this cause.

5. That said Court so convened, upon final hearing of this suit, enter a decree herein permanently suspending, enjoining, setting aside and annulling said order of the Secretary of Agriculture.

6. That petitioner have and recover of the defendants proper costs of suit.

7. That petitioner have such other and further relief in the premises as may be deemed meet and proper by said Court.

Robert G. Bosworth

Norman A. Hutchinson

Solicitors for Petitioner.

Pershing, Nye, Bosworth and Dick,
Of Counsel.

STATE OF COLORADO } ss:
City and County of Denver }

J. A. Shoemaker being first duly sworn on oath deposes and says, that he is the President and General Manager of the petitioner in the above entitled cause; that he has read the foregoing petition, knows the contents thereof, and that the same is true to the best of his knowledge, information and belief.

J. A. Shoemaker

Subscribed and sworn to before me this 9th day of March, 1937.

(Seal) Lillian A. Shepard
Notary Public

My commission expires:
April 24, 1937

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EXHIBIT A

UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

SECRETARY OF AGRICULTURE, v. DENVER UNION STOCK YARD COMPANY, Respondent.	B.A.I. DOCKET 450

RECOMMENDATIONS FOR PROPOSED FINDINGS AND ORDER

(This document is Exhibit A, attached to Petition in Cause No. 10913 in the District Court of the United States for the District of Colorado, entitled "Denver Union Stock Yard Company vs. United States of America and the Secretary of Agriculture".)

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UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

DOCKET NO. 450

SECRETARY OF AGRICULTURE vs. DENVER UNION STOCK YARD COMPANY, Respondent.	Recommendations as to proposed Proposed Proceedings, Findings of Fact, and Order.

I.

PROCEEDINGS

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at Denver, Colorado.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on November 8, 1934. In said order and notice it was alleged that the respondent is engaged in the business of conducting and operating a stockyard at Denver, Colorado, which has been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which has been posted as such; that in accordance with the requirements of said Act respondent

had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedules of rates and charges. The charges for the various services of respondent are set out in Tariff No. 3, which became effective on July 6, 1931, to which ten supplements have been filed from time to time. The last of these was Supplement No. 10, which was filed to become effective on December 1, 1934.

3. It was ordered that a hearing be had for the purpose of determining the lawfulness of any and all rates and charges of respondent and of any rule, regulation or practice affecting said rates and charges, or whereby any stockyard service is rendered by respondent without making a lawful charge therefor. The order of inquiry and notice of hearing fixed the time and place of hearing and notice of the hearing was given to respondent by serving upon it a copy of said order and notice.

4. Pursuant to the aforesaid order and notice a hearing was held at Denver, Colorado, before an Examiner designated by the Secretary of Agriculture, beginnig at 10:18 a. m., on June 3, 1935. The hearing was concluded at 3:00 p. m. on July 3, 1935. Respondent was present by counsel throughout the hearing. During the course of the hearing, oral testimony was taken which covered over 2300 pages of transcript. This, when reduced to narrative form, covered 1000 legal cap pages. There were introduced 118 exhibits, 68 by the Government and 50 by respondent, containing 4,000 pages, including more than 40 maps and photographs relative to respondent's property.

5. At the outset of the hearing respondent's counsel objected to the proceeding and to the introduction of any evidence on the ground that:

> "(1) The Packers and Stockyards Act of 1921 is an unwarranted delegation of legislative authority

to the Secretary of Agriculture contrary to the Constitution of the United States, and is therefore void, and that

(2) The Packers and Stockyards Act of 1921, in so far as it attempts to regulate the rates and charges of the Denver Union Stock Yard Company at its stockyards in Denver, Colorado, for services there rendered, for the use of the market there established by it, and for the use of facilities there provided by it, is beyond the power of the United States, being an intra state transaction only indirectly affecting interstate commerce and, therefore, beyond the constitutional power of Congress and void."

The Examiner overruled the objection.

II.

FINDINGS OF FACT

6. On the basis of the whole record, including the oral testimony of witnesses, exhibits, and official publications introduced in evidence, I make the following findings:

A. Location and General Description of Respondent's Property

7. The Denver Union Stock Yard is located within the City and County of Denver, Colorado, approximately three miles northeast of the center of the city. It is near paved highways which connect with good roads diverging in all directions. The stockyards is served on the east, west, and longitudinally through the center by railroad trackage facilities connecting with all trunk line railroads entering the city.

8. The stockyard area consists of several distinct divisions. The cattle division consists of a series of open pens, alleys, and appurtenances such as feed racks, water troughs, and yard offices or booths. This division is served on the east by the Chicago, Burlington & Quincy Railroad and the loading and unloading facilities known about the yards as the Burlington dock, and on the west by the Union

Pacific-Colorado & Southern joint tracks, and the loading and unloading facilities known as the Union Pacific docks. The cattle division extends from the southerly portion of the yards to a public street known as Race Court. It is a long, narrow strip equipped with pens and other facilities, most of which are not under cover.

9. The hog yarding facilities are in five hog barns and in portions of sheep barns Nos. 1 and 2, hereinafter described. Hog shed No. 1 was designated for receiving hogs trucked into the market, but it is used also for initial yarding of cattle and sheep received by truck. It is a one-story, open, frame shed adjoining the general truck-in loading and unloading facilities, and is generally referred to as the truck division. Its facilities consist of pens and adjacent service alleys, corn bunkers, and water troughs. The other hog sheds are of the same type of construction and in general have the same equipment as hog shed No. 1. These hog sheds are not, however, all of the same size.

10. The sheep yarding facilities are located on the first and second floors of sheep barns Nos. 1 and 2 and on the roof of barn No. 2. These facilities consist of pens and alleys in which sheep are yarded, reyarded, fed, watered, sold, and stored. The first floors, except that portion of barn No. 2 used for hogs, are occupied principally by holding and storage pens and alleys. The principal commission sections are located on the second floors. Sheep barn No. 1 is a two-story, reinforced concrete structure covering an area of approximately 320 x 422 feet. The building has a saw-toothed roof and light wells. It is equipped also with concrete ramps or inclines leading to the second floor. Sheep barn No. 2 is a three-floor, reinforced concrete structure covering an area of approximately 254 x 420 feet.

11. Adequate facilities are provided for the handling of each class or livestock in its respective division. The general arrangement of the facilities is conducive to prompt and efficient handling of livestock. The facilities now avail-

able afford ample accommodation for the current flow of livestock through the yard.

12. Trunk line railroads serve the stockyard. Not all of these have trackage into the yard. Those which do not have arranged with those which do, or with the respondent, for the use of trackage into the yard. Railroad trackage serving the yard is owned by the Chicago, Burlington & Quincy Railroad, Colorado & Southern Railroad, Union Pacific Railroad, Northwestern Terminal Railway Company, and respondent. In accordance with contracts with respondent, the railroads entering Denver serve the yards and other industries in the district over the trackage and right-of-way owned by respondent.

B. Services and Facilities Furnished by Respondent and the Rates Charged Therefor

13. Respondent operates its stockyard at Denver, Colorado. On its premises is conducted a public market where producers and others may send their livestock, either by rail or by truck, to be sold to such buyers as may resort there to purchase livestock to meet their requirements. Any person complying with reasonable rules and regulations maintained by respondent may buy or sell livestock at its stockyards. Producers and others who ship their livestock to market for sale seldom sell it themselves. It is customary for them to employ the services of commission firms, which operate on the market and hold themselves out as salesmen of livestock on a commission basis.

14. Respondent provides the physical facilities on which the livestock market is conducted, and renders certain services in connection with livestock coming to the stockyard to be marketed, livestock shipped direct to packers, livestock stopped in transit and handled for the railroads, and livestock handled for traders. Some of the facilities of respondent are used in connection with receiving, marketing, feeding, watering, holding, delivery, shipment,

weighing, or handling of livestock at its stockyard. For these services respondent charges certain rates.

15. The transportation of livestock to the Denver market includes the unloading of it into suitable pens. The railroad companies, instead of constructing the necessary unloading facilities and doing the work in connection with unloading, employ respondent to perform this service for them. Respondent also loads onto cars that livestock which is shipped by rail away from the market. For this service respondent charges the railroads $1.00 per car. In addition to furnishing the services described above, respondent also provides facilities and renders services for the use and convenience of persons conducting private business or furnishing public service at the stockyard for their own compensation or profit. Respondent renders a number of other miscellaneous services such as dipping and spraying and dehorning.

16. Respondent assumes responsibility for driving livestock from the railroad chute pens to the sales pens assigned to respective consignees, and placing it therein. If the consignee is a person who has no regularly assigned pens, his livestock is placed in convenient holding pens where it awaits later disposition by the consignee. Livestock arriving by truck is unloaded at convenient docks provided by respondent in the hog division. Hogs so arriving are delivered by respondent to the sales pens of consignees in the drive-in division where they are usually fed, watered, and sold. Cattle and sheep arriving by truck are yarded in suitable pens in the truck division where they are delivered to consignees, who drive them to their pens in the divisions in which rail receipts are handled.

17. Appropriate records are prepared by respondent and made available to consignees. These records give information relative to the origin of shipments, names of consignors, number of head and kinds of livestock, and the

number of the pens in which it is yarded. Suitable watering facilities are maintained in the pens by respondent. Respondent furnishes all feed fed in the cattle, hog, and sheep divisions, and maintains certain storage facilities from which feed is distributed. It is optional with a commission firm or owner of livestock whether respondent shall put the hay on the platforms, on the fences, or distribute it in the mangers. Corn is distributed to bins at convenient locations in the hog yards, and the feeding operations are performed by respondent.

18. The commission firms assume responsibility for the livestock upon its delivery to them. They see to it that the livestock is watered and properly fed. When necessary, they sort and grade the livestock so as to show it to the best advantage to prospective buyers. After livestock has been sold, it is driven to the scales by the employees of consignee. Respondent provides the weighing facilities. The scale crew, which does the weighing, consists of a weighmaster, a gate man at the entrance to the scale platform, and a counter-off at the exit gate. The weighmaster enters the names of the owner, seller, and purchaser of the livestock on the scale ticket on which the weight is registered. As the livestock is driven from the scales, he enters on the scale ticket the number and kind of livestock. The counter-off keeps a record of each draft weighed and directs the yarding operations.

19. Respondent conducts the yard-cleaning operations in the cattle and sheep divisions. In the sale section of the hog division the cleaning is done by an independent operator under contract in consideration of the corn he salvages from refuse left in the pen. All other yard facilities are cleaned by respondent except when it permits purchasers to enter its yards and remove refuse. The Colorado Horse & Mule Company cleans the premises in which it operates, and disposes of the refuse for its own account.

20. For its services in driving the livestock from the unloading chutes to pens, counting, checking, and keeping a record of each consignment, the furnishing of water, the weighing, and the use of the physical facilities necessary in performing these services, respondent charges the owner or shipper of livestock brought to market the following rates known as yardage charges:

21. On livestock received and sold, including livestock resold through commission firms, that sold or contracted in the country to weigh and/or deliver at the stockyards, and that consigned direct to packers and slaughterers:

Cattle	$ .35	per head
Calves (Under 1 year old)	.25	" "
Hogs	.12	" "
Sheep or Goats	.08	" "
Horses or Mules	.35	" "
Pure Bred Bulls	1.00	" "

Besides these charges, which apply to all livestock except that hereafter noted, additional charges are made on livestock arriving by vehicles other than rail as follows:

Cattle	$ .05	per head
Calves (Under 1 year old)	.02	" "
Hogs	.02	" "
Sheep or Goats	.02	" "

With one exception the charges stated above are assessed only once upon an animal during the time it is in the yard, regardless of the time it remains there, or the number of changes of ownership which occur. On that livestock resold through commission firms, however, the regular rates are charged. When livestock is consigned to the Denver market, offered for sale, and forwarded unsold, respondent assesses no yardage charge. A considerable amount of these "through shipments" arrive at Denver and are stopped for feed, water, and rest. The services rendered by respondent in connection with these "through shipments" consist in unloading, feeding and watering, and reloading the livestock as directed by the railroad company in whose custody the

stock is. The same classes of facilities are used for "through shipments" as for livestock consigned for sale at the market. The livestock is counted, yarded, fed, and watered. Inasmuch as no yardage charge is assessed against this class of business, the only revenues derived by respondent for handling it are the unloading and reloading charges and the profit on such feed as the animals in these "through shipments" consume.

22. The charges for feeding, bedding, etc., as set out in Supplement 10 to Tariff No. 3, are as follows:

Prairie hay or alfalfa (on fence)	$1.40 per cwt.
Prairie hay or alfalfa (fed out)	1.50 " "
Bedding straw	.65 per bale
Corn	1.50 per bushel measure

These charges are varied from time to time in accordance with fluctuations in the market price of feed. When livestock is fed or bedded or watered while in cars, a charge of $1.00 per deck is made in addition to the regular charge for feed or other material used. When empty stock or box cars are bedded with hay or straw, a charge of 50c per deck is made in addition to the charge for hay or straw used. On "through shipments" of hogs, ordered fed in car with feed furnished by shipper and already in car, a charge of $1.00 per car is made. A charge of $1.00 per car is made for livestock watered but not fed.

23. The barns and corrals composing the horse and mule division are operated by a commission company upon a consideration of a stated monthly rental of $200 and the payment of the regular yardage charge. Respondent reserves the right to use these premises whenever necessary, and does avail itself of this privilege during the stock show.

24. Practically all livestock is sold by weight and delivered to purchasers when driven off the scales. It is seldom practicable or convenient for purchasers to receive their livestock direct from the vendors and to remove the animals from the yards immediately after they are driven off the

scales. Respondent reyards such livestock in what is known as purchasers' holding pens or catch pens. The reyarding service is practically a duplication of the initial yarding services except for the fact that the bunches of livestock are smaller and more numerous. In most cases different pens and yarding facilities are used for reyarding that livestock bought by packers, traders, or by those who ship it from the market.

25. There is a separate division within the cattle division known as the "traders' division". No such separate trader division exists either in the hog division or in the sheep division. Cattle purchased by a dealer are driven, for the most part, by respondent to the traders' division. The physical characteristics of this division are substantially similar to those of the commission department. The services rendered by respondent with respect to livestock held in each do not differ materially. A large percentage of the cattle handled at the Denver market is of the stocker and feeder class, and is destined eventually to go to country feeders and growers. The dealer purchases numerous groups of animals and grades and sorts these into classes which he thinks will best meet the demands of buyers. Respondent makes no yardage charge for facilities and services furnished in the traders' division. The regular charge is made for feed in this division. Most of the livestock purchased by traders is resold by themselves, but occasionally traders move their livestock into the commission department and employ the services of a commission firm in making the sale. This process is known as "planting". Respondent collects the regular yardage charge on "planted" livestock.

26. If the purchaser of livestock be one who desires to ship it from the market, respondent drives it to pens convenient to the loading docks and holds it there until it is ready to be loaded out. Respondent performs the loading service for which it receives $1.00 per car from the carrier. No yardage charge is made to the purchaser for such livestock.

27. For convenience of operation the stockyard is di-

vided into divisions, and definite pens are assigned for the preferred use of commission firms and other individuals engaged in business at the market. Not all pens are so assigned. During periods of heavy runs, and as other circumstances may require, respondent may change an assignment to meet current needs of business.

28. As heretofore stated, the length of time during which an animal remains in the stockyard is not a factor in determining the amount of yardage charged. Inasmuch, however, as livestock consumes feed throughout its entire stay in the yard, the profit made on the sale of feed for such livestock tends in a degree to compensate for the time element.

29. The Exchange Building is an office building maintained by respondent for its own use and the use of those having their business locations at the market. Respondent's tariff does not set out the charges made by it for rent. Respondent's tariff sets out rates and charges covering such services as branding, dehorning, dipping, disinfecting, testing, immunizing, vaccinations, boarding horses, and special weighing. Exceptional services are rendered under special agreements. Minor items of income other than that from services hereinbefore mentioned are realized from activities for which no rates or charges are listed in the tariff.

C. Criterion of Reasonable Stockyard Rates

30. It is the law that all rates and charges made for any stockyard service furnished at a stockyard by a stockyard owner shall be just, reasonable, and non-discriminatory, and that any unjust, unreasonable, or discriminatory rate or charge is prohibited. Respondent is entitled to charge rates for the stockyard services rendered by it which are reasonable and non-discriminatory. Such a schedule of rates assesses charges equitably among the various users of its services. Respondent is entitled also to charge rates of such altitude that they will produce gross revenues enough to pay all reasonable operating expenses, including taxes

and an adequate amount to compensate it for the depreciation in its plant and equipment, and in addition a net operating income equal to a fair return upon the fair value of its property. In the application of this standard of reasonableness an analysis of the testimony has been made to determine the fair value of respondent's land and physical structures, an examination has been made of its operating expenses over a period of years and a fair rate of return has been determined.

D. Used and Useful Character of Respondent's Property

Land

General Statement:

31. The land owned by respondent is located some three miles northeast of the central portion of the City of Denver. The buildings, pens, chutes, scales, railroad tracks, and other facilities occupy portions of 130.57 acres of land lying along the South Platte River, most of it on the eastern side. At the date of the appraisal of the land respondent owned 131.045 acres, but between the date of the appraisal and that of the beginning of the hearing it sold .475 acres to Armour & Company under an option of long standing.

32. Within the immediate vicinity of respondent's stockyards and contiguous to its land are the plants of Swift & Company and Armour & Company. Somewhat more remote, but within easy access of the yards, are a number of the smaller packing plants, a rendering plant, and a number of other industries such as are usually found in and around a packing center. In the vicinity of respondent's plant and on land owned by it are some commercial feed lots. Not far removed from respondent's land are to be found retail stores, garages, an industrial district developed by a railroad, in which are mills, a by-products company, lumber yards, fuel yards, gasoline stations, and the like. In the neighborhood also are feed mills, elevators, iron foundries, and metal works.

33. The premises of the stockyard company are reached by means of improved public highways from all directions and are served within by a system of roadways built by the company on its own land or on leased land. Respondent's plant and facilities are amply served by railroads and by a system of railroad trackage of its own which runs through various sections of its yards.

34. The City of Denver is served by the Chicago, Burlington & Quincy Railroad, the Union Pacific Railroad, the Colorado & Southern Railway, the Denver & Salt Lake Railway, which leases the Northwestern Terminal Railroad, the Denver & Rio Grande Western Railroad, the Chicago, Rock Island & Pacific Railway, and the Atchison, Topeka & Santa Fe Railway. Respondent's land and facilities are a suitable place for conducting its business and for rendering a high type of service.

35. Preparatory to the appraisal of respondent's land it was divided by agreement into ten zones. All appraisers employed these zones in setting a value upon respondent's land, which is described more particularly by zones in the paragraphs which follow:

Zone 1: Description, area of used and useful and of non-used and useful portions.

36. The land on which the greater portion of the cattle commission division and the hog and sheep divisions have been constructed has been designated for purposes of appraisal as "Zone 1". This zone is made up of two parcels. One is triangular in shape and lies between the Union Pacific Railroad right-of-way on the west, and the Chicago, Burlington & Quincy right-of-way on the east; the other parcel is rectangular in shape and lies between the packing plants of Swift and Armour and west of the Union Pacific Railroad right-of-way. This land is generally level and well situated for stockyard purposes.

37. At the time the land of respondent was appraised there were in Zone 1 38.534 acres, or 1,678,543 square feet.

Of the land sold to Armour & Company (see paragraph 31) .266 acres or 11,587 square feet were in this zone. On the land in this zone the greater portion of the physical facilities of respondent are located. Among the service units in the zone are the Exchange Building, the commission section of the cattle division, the hog barns, the sheep barns, the railroad chutes, the loading and unloading docks and pens, the general truck dock, the general alleys and passageways, hay barns, corn tanks, scales, immunizing facilities, roadways, the bulletin office commonly known as the chute house, an auto repair shop, a filling station, railroad tracks belonging to respondent, a few other minor service units, and several parcels of vacant land. The service units lying wholly within this zone occupy 1,126,261 square feet. Some of the facilities mentioned, such as pens and alleyways, extend over on to Zone 2. Of the facilities which are located on both zones those portions lying in Zone 1 occupy 488,158 square feet.

38. The question as to the used and useful character of the land in this zone arises with respect to certain parcels of vacant land; the land on which is located the garage and the auto repair shop and the filling station; that occupied by the unloading and loading facilities; and the land occupied by the railroad tracks belonging to respondent.

39. With respect to the vacant land, it is sufficient to state that in the construction of a plant of the character of that belonging to respondent it would be impracticable to construct physical facilities on every square foot of land owned by it. These small parcels of land may so lie with respect to the physical facilities that in due course service units may be constructed on some of them, while certain other parcels may be so situated that they will remain vacant. A consideration of these small parcels gives rise to the question of the used and useful character of small portions of land interspersed among the various service units. Interspersed land is so closely related to the other land and the physical facilities that no doubt arises as to its used and

useful character. Inasmuch as all the unoccupied parcels of land in Zone 1 are of this character, it is found that all the vacant land in Zone 1 is used and useful. The land on which is situated the garage, the auto repair shop, and the filling station is so situated with respect to the other facilities of respondent that it falls into the class of interspersed land. The land on which these units are located is found to be used and useful.

40. The unloading and loading facilities of respondent consist of unloading platforms, chutes into pens suitable for holding livestock temporarily, and sufficient alley space to give ingress and egress into and out of the holding pens and the land upon which super-structures rest. There are four railroad docks in Zone 1. The Burlington dock occupies 55,452 square feet; the Union Pacific, 54,788 square feet; the Colorado & Southern docks, 27,026 square feet; and the river dock, 24,966 square feet. The railroad companies themselves do not unload and load the livestock handled by them. They employ respondent to do this and pay it $1.00 per car for each car loaded or unloaded. The railroad companies do not own livestock depot facilities of their own, but use the unloading and loading facilities of respondent . The Interstate Commerce Commission has decided that the service of unloading and loading livestock from and into cars is a common-carrier service subject to the provisions of the Interstate Commerce Act. (See I.C.C. Investigation and Suspension Docket No. 4109, page 342, of which notice is here taken.) [1] The Packers and Stockyards Act provides that nothing therein should affect the jurisdiction of the Interstate Commerce Commission or confer upon the Secretary of Agriculture concurrent jurisdiction over any matter within the jurisdiction of the Interstate Commerce Commission

Petitioner's Note [1]—The final report, Exhibit C, at this point contains the following: "We are of opinion and find that respondent in the performance of these unloading and loading services is a common carrier subject to the provisions of the Interstate Commerce Act and as such is required to file tariffs with us covering its charges for unloading and loading livestock at its public stockyards in Chicago."

The Supreme Court has ruled that the loading and unloading of livestock is a transportation service (295 U.S. 193).

(Packers and Stockyards Act, 1921, Section 406). Inasmuch as the unloading of livestock from and into cars is a railroad service, the charge therefor is for a railroad service and not a stockyard service. If the expense incident to loading and unloading of livestock from and into cars is passed to the shipping public through the assessment of railroad rates, it is obvious that it should not be passed on again as a stockyard expense covered in the stockyard rates. To include in respondent's used and useful property the land and facilities used by it in the unloading and loading of livestock and allow a return on the value of such land and facilities would be to compel the shipping public to pay as a stockyard expense an amount which it had already paid in the form of railroad rates. It is found, therefore, that the land on which are situated respondent's railroad unloading and loading facilities is not used and useful in the rendition of a service for which are charged rates, the reasonableness of which is being determined herein.

41. Respondent owns and keeps in repair a system of railroad trackage throughout the yards covering an area of about 5½ acres. The land in Zone 1 occupied by these railroad tracks covered an area of 58,124 square feet when respondent's land was appraised. Between that date and the date of the hearing respondent sold to Armour & Company a parcel of land, 11,587 square feet of which were in Zone 1, leaving 46,537 square feet owned at the date of hearing. These railroad tracks were constructed at the expense of respondent and are maintained and repaired by it. It leases its railroad tracks to various railroad companies under a contract according to which they pay respondent as rental 6% of an agreed valuation of $121,984.49. In addition the railroads reimburse respondent for maintenance, repairs, and taxes. The amount of taxes is determined by applying the current local tax rates against an amount equal to one-half of the agreed valuation. The railroads use the tracks leased from respondent and the right-of-way to get to and from the unloading and loading docks owned by re-

spondent and also to and from the various industries located in the packing district. If transportation does not cease until livestock shipped by rail is unloaded into suitable pens, as has been determined by the *Interstate Commerce Commission,* transportation has not ended when livestock is being brought to *the unloading facilities regardless of whether it is brought* to those facilities over tracks owned by railroad companies or leased by them. It is found, therefore, that the land on which are located railroad tracks owned by respondent, but leased to the railroads, is not used and useful in the rendition of a service, the reasonableness of the rates for which is being determined herein. The land on which is situated the yardmaster's office is used in connection with the transporting by rail and the unloading and loading of livestock and is used for a transportation service. It is found also that the land occupied in Zone 1 by the yardmaster's office and grounds is not used and useful in the rendition of a service for which are charged rates, the reasonableness of which is being determined herein. It is found that all land in Zone 1 not specifically found to be not used and useful, is used and useful.

42. The following table sets forth the land in Zone 1 found to be used and useful in the rendition of services for which are charged rates, the reasonableness of which is determined herein and the land found to be not used and useful in the rendition of such services:

Used and Useful	Square Feet
Land on which are:	
General Truck Dock	8,540
Cattle Division-Commission Section	399,070
Hog Division-General Utility Section-Hog Barns 1,2&3	42,062
Hog Division-General Utility Section-Sheep Barns # 2	11,513
Hog Div.-Commission Section Sheep Barn # 2	33,553
" Div.-Purch. Temp. Hold Sec. Hog Barns 4 and 5	28,655
" " -Traders Sec. Sheep Barn # 1, 1st Floor	2,137
" " -Purch. Temp. Hold. Sec. Sheep Barn # 1, 1st Floor	18,613
" " -General Alleys	18,349

Sheep Div.-Gen. Util. Sec. 1st Floor Barns 1 & 2	142,110
" " -General Alleys, 1st Floor	26,363
" " -Entrance to Sheep Barn # 2	1,369
Hay Barn No. 2 and Scale	9,500
Corn Tank	1,250
Sheep Dipping Facilities	14,320
Hog Dipping Facilities	5,085
Hog Immunizing and Vaccinating Facilities	5,204
Cattle Inspection Chute and Pen 2,537	513
Cattle Scales, 2, 4, 5, 10 and 11	73,363
Hog Scales 3, 9, 13, 14	13,553
Sheep Scale No. 7	1,808
Stock Viaduct	1,093
Pedestrian Viaduct over Cattle Dvision	120
Armour & Co. Stock Drive	1,520
Livestock Subway	703
Truck Washing & Cleaning Facilities	1,160
R/W.N.E. of Intersection C.B.&Q. and U. P. R./W	1,375
Exchange Building	50,845
Bulletin Office Building (Chute House)	16,622
Garage	11,171
Auto Repair Shop	1,582
Filling Station	2,859
Vacant Land South of Hay Barn No. 2	4,875
Vacant Land East of Cattle Pens 1,000 etc.	2,408
Vacant Land along West side Cattle Division	5,791
Cattle Div.-Commission Section)	
" " -Purch. Temp. Hold. Section)	
" " -General Utility Section)	488,158
" " -General Alleys)	
Armour & Co. Roadway	6,000
Total Used and Useful	1,453,212 Sq. Ft. or 33.360 Acres
Land on which are:	
Yardmaster's Office and Grounds	4,975
Burlington Dock	55,452
Union Pacific Dock	54,788
Colorado and Southern Dock	27,026
River Dock	24,966
Railroad Right-of-way (Owned at date of Hearing)	46,537
Total Non-Used and Non-Useful	213,744 Sq. Ft. or 4.907 Acres

Total land in Zone 1 1,666,956 Sq. Ft. or 38.267 Acres

Zone 2: Description, are of used and useful and of non-used and useful portions.

43. At the time the land of respondent was appraised Zone 2 contained 23.19 acres or 1,010,197 square feet. Between the date of appraisal and the date of the hearing 9,104 square feet of land lying in this zone was sold to Armour & Company. On Zone 2 are located the truck cattle-loading facilities, the tuberculosis pens in the cattle division, hay barns, some branding chutes, the cattle-dipping facilities, scales, manure dump frame, a large pen used at times for holding manure, the material yard, the shop and construction yard, roadways and lunch room, the truck-loading dock, some vacant land east of the manure dump and other vacant land adjacent to the Chicago, Burlington & Quincy right-of-way, portions of general alleys and pens, a roadway referred to as the Armour roadway, and railroad tracks belonging to respondent and used jointly by the railroads. This zone lies in the northern section of the yard just south of a street known as Race Court and between the Chicago, Burlington & Quincy right-of-way on the east, and Franklin Street, and the Northwestern Terminal Railway on the west. The only land in Zone 2 as to the used and useful character of which a doubt arises is the vacant land and the land on which are located the railroad tracks owned by respondent, and that occupied by a large pen known as No. 4212 in which manure is sometimes dumped.

44. With respect to the pen the evidence shows that, while it is used for purposes of dumping manure at certain seasons of the year, it is required and used at other seasons in handling cattle arriving at the stockyard. Its use for manure-dumping purposes depends upon whether it is needed for yarding purposes. Whenever it is needed for yarding the manure is removed and livestock is yarded therein. The area of the land occupied by this pen is 34,661 square feet. The lunch room on this zone is let to an independent operator on a monthly basis. Its patrons are employees of the stockyard company, the commission firms and the traders,

who operate in that section. The area occupied by this lunch room and the grounds which surround it is 1,952 square feet. If the lunch room were not on this ground it would not be excluded from the used and useful land because of the fact that it is a small parcel interspersed with other used and useful land.

45. There are two vacant areas of considerable size in this zone. One is a parcel of 49,177 square feet lying east of the manure dump and hay barn No. 4 and its grounds; the other is a parcel of 35,675 square feet adjacent to the Chicago, Burlington & Quincy right-of-way and extending from the north end of the Burlington dock to the approach to the cattle truck chute. This land is east of and outside of the stockyard fences. The larger of these areas is so situated with respect to the hay barn and manure dump and sheds located in that section of the yard that it may be considered as an extension of the land used in connection with these. The smaller parcel serves as a clearance in connection with the operation of respondent's yard. These two parcels amounting together to approximately two acres of ground may be considered as interspersed land because of their use. Due to their use these two parcels should not be excluded from the used and useful land.

46. There was in Zone 2 at the date of the appraisal 45,669 square feet of railroad right-of-way belonging to respondent. In reconciling the area expressed in square feet and in acres, 213 square feet must be deducted from the 45,669 square feet, leaving 45,456 square feet. When 9,104 square feet, which is the portion of the Armour sale lying in Zone 2, are deducted from 45,456 square feet, the remainder is 36,352 square feet, which is the railroad right-of-way lying in Zone 2. For reasons heretofore stated in those paragraphs wherein is discussed the used and useful character of the land on which are respondent's railroad tracks it is found that the 36,353 square feet occupied by respondent's railroad tracks is not used and useful in the rendition of services, the reasonableness of the rates for

which is being determined herein. It is found that the remainder of Zone 2 is used and useful in the rendition of such services.

47. The following is a summary of the used and useful and the non-used and useful parcels of land in Zone 2:

Non-Used and Useful	Square Feet
Land on which are:	
Truck Cattle-Loading Facilities	26,777
Cattle Division—T. B. Pens	11,709
Hay Barn No. 3 and scale	13,925
” ” ” 4	55,148
Branding Chutes 1-2-3, etc.	25,520
Cattle-Dipping Facilities	4,573
Cattle Scale No. 1	12,726
” ” ” 6	10,841
Manure Dump Frame, etc.	65,208
” ” Pen 4212	34,661
Material Yard	9,200
Shop and Construction Yard	30,278
Roadway along Track No. 28	23,749
Roadway South of Hay Barn No. 4	7,800
Lunch Room and Grounds	1,952
Vacant Land East of Manure Dump	49,177
Vacant Land adjacent to C. B. & Q. R/W to Cattle Truck Loading Dock	35,675
Cattle Division—Traders Section)	
” ” —Purch. Temp. Hold. Section)	
” ” —General Utility Section)	528,472
” ” —General Alleys)	
Armour & Co. Roadway	17,350

Total Used and Useful 964,741 Sq. Ft. or 22.147 Acres

Non-Used and Non-Useful	Square Feet
Land on which are:	
Railroads belonging to respondent	
(After Armour sale)	36,352 Sq. Ft. or .835 Acres
Total land in Zone No. 2	1,001,093 Sq. Ft. or 22.982 Acres

Zone 3: Description, area of used and useful and of non-used and useful portions.

48. This zone is a parcel of land lying north of Race

Court west of the Chicago, Burlington & Quincy right-of-way, and in a southerly direction from the Adams County line. It contains 863,574 square feet or 19.825 acres. Something over 5¼ acres in this zone have been leased by respondent to Swift & Company. This company several years ago constructed at its own expense pens, feed troughs, wells, water lines, sheds, platforms, and other equipment necessary in operating a feed lot. Some three years ago Swift & Company assigned its lease on this land to a private individual and at the same time leased to him its buildings and improvements. The plant is now privately operated by the lessee as a commercial feed lot. Another portion of Zone 3 has been leased by this same individual from respondent. He has constructed at his own expense pens and other facilities necessary in connection with the operation of a feed yard.

49. At the extreme west end of this zone is a small parcel of land containing 6,534 square feet, which respondent has deeded to the City and County of Denver for ingress and egress in connection with the improvements along the South Platte River. One of respondent's sewers empties into the river channel in this area. About 13½ acres of the zone are similar in character to the land in Zone 2 and are practically on the same level. The remainder, something over 6 acres, is somewhat broken and lies higher than the rest of the zone. This portion contains gravel. The land in this zone can be reached from the east by way of Race Court and from the west by way of Franklin Street. It is accessible from the Burlington Railroad on the east and the Northwestern Terminal Railroad on the west. There are in this zone also the Union Pacific tracks which belong to respondent.

50. The land in this tract other than that occupied by the commercial feed lots is vacant. Respondent claims that this land is used and useful. The witness called by the Government, for the purpose of describing the facilities of respondent and stating the use to which the various serv-

ice units are put, described the major portion of this zone as being unused land for the most part. His exception was a small area in the northwesterly corner where miscellaneous debris is dumped and the northerly corner where the stockyards obtains gravel. That portion of this zone not occupied by the feed lots, the railroad right-of-way, and the gravel deposit is not designed or permanently set aside for the primary purpose of dumping and storing manure, notwithstanding the fact that small deposits of manure and debris are scattered thereon. The assistant general manager of the stockyards is of the opinion that some portions of this zone may have greater utilization in the future than they have now, but he is of the opinion that the purposes for which this land is now being used would bring it within the classification of used and useful land in the handling of livestock in commerce at the Denver stockyards without any further utilization. He is of the opinion further that if the land were not now owned by the stockyards company it would be necessary for it to purchase this zone. One of the land appraisers of respondent was of the opinion that the land is used and useful for purposes of expansion. In placing a value upon this zone this witness designated about 10,000 square feet or approximately ¼ acre in the river channel as practically worthless. It is on this portion that the city now has an easement in connection with the river improvement. According to an agreement with the city the street known as Race Court can be moved from its present location between Zone 1 and Zone 2 to the northerly border of respondent's property along the Adams County line.

51. Portions of this land are used for the purposes of dumping refuse and manure and the procuring of sand and gravel by respondent. Portions of it, as has already been stated, have been leased to private individuals for the conducting of private feed yards. The testimony as to the present use to which some of this land is put warrants the conclusion that some of it should be found to be used and useful. If conditions develop in the future which require

further expansion of the pen area this land will be available. The used and useful character of the railroad land owned by respondent has hereinbefore been discussed in connection with the land in Zone 1. It is found, therefore, that the 521,049 square feet of vacant land in Zone 3, the 6,534 square feet in the northwesterly corner, and 213 square feet necessary to bring into agreement the areas of Zones 2 and 3, when expressed in square feet and in acres, are used and useful. It is found also that the 325,493 square feet occupied by commercial feed lots and leased to a private party and the 10,285 square feet of railroad right-of-way are non-used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein. The number of square feet in Zone 3 found to be used and useful is 527,796. This is equivalent to 12.117 acres. The number of square feet found to be not used and useful is 335,778. This is equivalent to 7.708 acres, making the sum of these two areas expressed in acres 19.825.

52. The following summary gives the land found to be used and useful and that found not to be used and useful in Zone 3:

Used and Useful	Square Feet
Vacant Land in Tract No. 3B	521,049
Easement in northwesterly corner of Tract 3B	6,534
Adjustments necessary incident to decimal computations	213
Total Used and Useful	527,796 Sq. Ft. or 12.117 Acres

Non-Used and Useful	Square Feet
Commercial Feed Lots	325,493
Railroad right-of-way, Track No. 28-B	10,285
Total Non-Used and Useful	335,778 Sq. Ft. or 7.708 Acres
Total Used and Useful	527,796
Total Non-Used and Useful	535,778
Total Area of Zone 3	863,574 Sq. Ft. or 19.825 Acres

Zone 4: Description, area of used and useful and of non-used and useful portions.

53. Zone 4 contains 18.722 acres or 815,510 square feet. This zone is a long circular and irregularly shaped piece of land extending from Franklin Street on the north to the Colorado & Southern right-of-way on the south. The western boundary of the zone is the eastern bank of the South Platte River, and the easterly boundary is the property of Swift and Armour and that land of respondent in Zone 1 occupied by the hog barns and the sheep barns. In this zone are located hay barns, a material shed, a roadway, an easement along the South Platte River, a railroad right-of-way, and a trackman's tool house. In addition to the land on which are located these service units, there are four separately described parcels of practically vacant land.

54. One of these parcels is south of the old Blayney-Murphy property and north of land owned by Swift & Company. In this parcel there are 177,739 square feet. Underneath this land there is a 21-inch sewer pipe extending from the cattle division across the stockyard railroad tracks, the Chicago, Burlington & Quincy right-of-way, and across other land now owned by respondent. There is also a 30-inch sewer pipe underneath this land which serves Armour & Company and receives also drainage from the cattle division thru a 12-inch sewer crossing the stockyard railroad tracks, the Union Pacific right-of-way, and passing through the Armour packing plant. Another sewer 18 inches in diameter extends from Armour & Company's plant to the river. Underneath this land is a 12-inch water pipe which extends from a well to the Armour & Company plant.

55. Another parcel of vacant land contains 64,030 square feet. This parcel of land lies between the vacant land just described and the embankment constructed when the channel of the South Platte River was straightened. This land was formerly a part of the river bed. It, too, is traversed by sewers which serve Armour & Company's pack-

ing plant directly and the stockyards indirectly, and by an extension to the cattle division. Another parcel of this vacant land lies in the south portion of the yards and borders on the Colorado & Southern right-of-way. It is triangular in shape and lies between a strip of land owned by Swift & Company and the easement along the South Platte River. The area of this parcel is 136,178 square feet. A sewer underneath this land leads from Swift & Company into the South Platte River. The rest of the land is filled and is in varying conditions of level. A fourth parcel used mainly by the employees of Swift & Company for parking purposes contains 63,318 square feet of land.

56. The railroad tracks belonging to respondent occupy in this zone a right-of-way of 127,544 square feet.

57. Between the parcels of vacant land heretofore described and the South Platte River, there is a 50-foot easement along the bank of the river. That portion of the easement which is in this zone contains 132,718 square feet. Near this easement is a roadway which is used by the city in connection with repairs and work done on the South Platte River improvement. This road is not a public thoroughfare, although it is very generally used, particularly by those industries which operate in that vicinity. It furnishes an approach for fire apparatus to the structures and buildings of respondent and the other industries in that locality.

58. Respondent claims that all the land in this zone is used and useful. The witness called by the Government to describe respondent's facilities gave a detailed account of the use which is presently being made of this land. This zone furnishes a sewer outlet to respondent and others. Certain portions of the vacant land, particularly that lying toward the southern end of the yards, can be developed into a parking space for trucks. It is possible that pens for yarding livestock might be constructed on certain portions, but in view of the fact that the yards have expanded in a northerly direction it is not probable that the land will be

so used. [2] *Moreover, adequate allowance for land for expansion has already been made in zone 3.* In view of these facts, it does not seem reasonable to carry into the rate base the value of all the vacant land in this zone. Yet it is not practicable to determine just how much surface area is needed in connection with the structures which lie underneath this zone.

Some allowance should be made for the reason that access to sub-structures is necessary. It is not practicable, however, to determine mathematically the number of square feet which should be allowed for this purpose. It seems reasonable and just to include one-half of all the vacant land in this zone as used and useful, and it is so found. It is found that the land occupied by respondent's railroad tracks and the trackman's tool house is not used and useful. It is further found that the land occupied by the hay barns, the material shed, the roadway, and the easement along the South Platte River is used and useful. A summary of the land found to be used and useful and that found not to be used and useful is as follows:

Used and Useful	Square Feet
Land on which are:	
Hay Barn No. 5 and Scale	19,158
Hay Barn No. 6	40,750
Material Shed West of Hay Barn No. 6	5,148
Roadway (Swift & Co.)	3,956
Roadway	5,475
Roadway	39,305
½ Vacant Land North and West of Track No. 27	88,869.5
½ Vacant Land in Tract No. 10	68,089
½ Vacant Land in Tract No. 6	32,015.
½ Vacant Land in Tract No. 1	31,659
Easement along Platte River	132,718
Total Used and Useful	467,142.5 Sq. Ft. or 10.725 Acres

Petitioners Note [2]—The final report adds "at any time in the near future," and omits italicized portion.

Non-Used and Useful	Square Feet
Land on which are:	
Trackmen's Tool House	191
Railroad right-of-way	127,544
½ Vacant Land North and West of Track No. 27	88,869.5
½ Vacant Land in Tract No. 10	68,089
½ Vacant Land in Tract No. 6	32,015
½ Vacant Land in Tract No. 1	31,659

Total Non-Used and Useful 348,367.5 Sq. Ft. or 7.997 Acres
Total Used and Useful 467,142.5
Total Non-Used and Useful 348,367.5
Total area Zone No. 4 815,510 Sq. Ft. or 18.722 Acres

Zone 5: Description, area of used and useful and of non-used and useful portions.

59. This zone consists of a body of land containing 550,598 square feet of which 511,394 square feet is vacant and 39,204 square feet is an easement 50 feet wide along the bank of the South Platte River. The total area of this zone expressed in acres is 12.64. The land in this zone is no longer subject to overflow during periods of flood. The land is not now being used and any plans that may have been proposed at the time of the previous hearing looking toward the erection of pens or other improvements on this area have not been carried out. This land lies on the west bank of the South Platte River and across that river from the main body of the respondent's property. There is no approach across the river between the main body of the stockyards and the vacant land on the west side of the river. Respondent claims that this land is used and useful and that it is being held as land for expansion. Zone 4, a part of which is vacant, lies between the main body of the stockyards and the river and the river separates Zones 4 and 5. The growth of the yards has not been in the direction of Zone 5, but in a northerly direction toward Zone 3, the vacant land in which are included as used and useful *for purposes of expansion. Inasmuch as ample allowance for land for expansion has been made in Zone 3 and in Zone 4 an allowance*

in Zone 5 of land for this purpose would go beyond the point of reasonableness and would levy the carrying charges on account of this land upon livestock shippers during a period when there is no likelihood that it would be needed in the handling of their livestock. [3]

60. The easement along the river in this zone does not serve and facilities now operated by the respondent *and is not likely to do so at any time within the predictable future.* It is found, therefore, that all the land in Zone 5 is not used and useful for any service, the reasonableness of the rates for which is being determined herein. The area and detailed description of Zone 5 is as follows: Zone 5 contains 12.640 acres of land.

Non-Used and Useful	Square Feet
Vacant land in Tract No. 2—West of River contains 550,598 sq. ft. However, there is an easement to the City and County of Denver, described as follows: "Parcel 2-C—0.90 acres (39,204 sq. ft.) located on Tract 2-A west of the river". Therefore, 550,598 sq. ft. less 39,204 sq. ft equals:	511,394
Easement	39,204
Total	550,598 Sq. Ft. or 12.64 Acres

Zone 6: Description, area of used and useful and of non-used and useful portions.

61. Zone 6 is a 3.383-acre irregularly shaped area of land lying in the southerly portion of respondent's property. It lies between 46th Avenue on the south, the Colorado & Southern right-of-way on the north, the Chicago, Burlington & Quincy Railroad right-of-way on the east, and land owned now by the Pepper Packing Company. The area of this zone in square feet is 147,343. Of this area 133,905 square feet is vacant and not used except as a general city dump in which are found tin cans, automobile bodies, and general refuse. Much of this portion of the

Petitioner's Note [3]—Italicized portion omitted from final report.

land lies below the grade level of adjacent land. In this zone also there are the railroad tracks commonly known as the Chicago, Burlington & Quincy tracks, which belong to respondent. These tracks occupy 3,245 square feet. A roadway leads from 46th Avenue into the stockyards and to the Swift and Armour plants. This road is surfaced with asphalt or material of similar character and provides means of ingress and egress to and from respondent's premises and to the packing plants. The road in this zone is a portion of a roadway extending from 46th Avenue on the south to Franklin Street on the north and is used in common in the interests of respondent, Swift & Company, and Armour and Company. This roadway occupies 10,193 square feet in Zone 6.

62. Respondent contends that the whole of Zone 6 is used and useful. Respondent's assistant general manager states that this zone is being filled as rapidly as filling is available and that it is the plan of respondent to use this zone for parking empty trucks and for the storage of loaded trucks when truck arrivals come faster than they can be cared for. He states further that the City of Denver and the Chicago, Burlington & Quincy Railroad are now proposing to put a subway under the Burlington right-of-way on 46th Street and to close the road running along the Colorado & Southern right-of-way south of Zone 9 and that when this road is closed respondent will require a much wider approach and a wider road in Zone 6 than at present. A subway built under the Chicago, Burlington & Quincy tracks will be lower than the average level of Zone 6 and for this reason he claims the roadway in Zone 6 will have to have a turning radius as well as an incline and that a roadway will be required wider than that across Zone 6, which now connects the yards with 46th Avenue. This witness also states that respondent is now using by sufferance a portion of the Chicago, Burlington & Quincy right-of-way between the Exchange Building and the Colorado & Southern tracks as a road and that this roadway can be closed on short notice and undoubtedly will be closed when

the proposed subway is built unless other arrangements are made. He states that respondent's roads are narrow and that its location is such that it cannot permit long lines of trucks to extend over railroad tracks and on 46th Avenue for the reason that this would congest traffic and slow up all movements. He states that as the truck business grows respondent will be compelled to use all of Zone 6 for the parking of empty trucks or for the storage of loaded trucks, particularly when the new hog lay-out is built.

63. One of the witnesses who appraised respondent's land was of the opinion that Zone 6 is required for future railroad switching facilities. A witness called by the Government, who had made a careful analysis and given a minute description of the service units of respondent, was of the opinion that the railroad tracks in this zone are reasonably necessary in the course of commerce whereby livestock passes from the place of production or shipment to, from, or through the stockyards, to the place of its ultimate destination. This same witness was of the opinion that the roadway located in tract 6, commonly known as the Swift roadway, should be similarly classified.

64. For reasons already stated in discussing the used and useful character of the railroad land in Zone 1, the 3,245 square feet occupied by the railroad tracks in Zone 6 are found to be not used and useful in the rendition of any services, the reasonableness of the rates for which is being determined herein. The evidence shows that by far the greater portion of the land in Zone 6 is hardly more than a dump. One of the witnesses who appraised respondent's land looked upon Zone 6 as land for expansion in the extension of railroad facilities. If he were correct in his assumption that the land is being held for this purpose it would be found not to be used and useful for reasons heretofore set forth. Respondent's assistant general manager states that this land is being held in reserve largely as a parking lot for livestock trucks either before or after their unloading. He states that the land is gradually being

filled, but does not state the rate at which it is being filled or any date in the near future on which this land may be expected to be put to any use. The prospective use to which it may be put is, according to this witness, contingent somewhat upon the expansion of the hog facilities. Sufficient vacant land has already been included in Zone 4, which lies nearer respondent's main yarding area, to provide truck parking space for many years to come. The testimony with respect to the character of this land and with respect to its potential use and with respect to the date when it may be expected to come into use does not warrant including it in the used and useful land. It is found that the 133,905 square feet of vacant land in this zone is not used and useful in rendering any services, the reasonableness of the rates for which is determined herein.

65. The evidence cited above indicates that the roadway in Zone 6 is a portion of a private roadway leading through the yards and used in common by the various industries located near it. That portion of the roadway lying in this zone, while furnishing ingress and egress to Swift & Company, would be necessary in the operation of the stockyards even if it were not used by Swift, Armour, and others. The assistant general manager of the respondent states that a wider roadway will be necessary if a subway is built under the Chicago-Burlington right-of-way on 46th Avenue. No definite statement is made as to when such an underpass may be expected to be built. It is stated that the city and the Chicago, Burlington & Quincy are now proposing to put a subway under the Burlington right-of-way. No date is indicated as to when this improvement may be expected to be made. Whether and when this improvement will be made are matters of speculation. The probabilities of the need of a wider roadway than that now on Zone 6 are too remote to justify the allowance of an increased area for that purpose and the inclusion of the value thereof in the base in determining the rate for services, the reasonableness of which is being determined herein. As stated above, respondent needs a roadway

through Zone 6 for ingress and egress. It is, therefore, found that the 10,193 square feet, the area now occupied by the roadway crossing this zone are used and useful in the rendition of the services, the reasonableness of the rates for which is being determined in this order. The following is a summary of the land in Zone 6 found to be used and useful and that found not be used and useful:

Used and Useful	Square Feet	
Land on which are:		
Roadway	10,193	Sq. Ft. or
	.235	Acres

Non-Used and Useful	Square Feet	
Land on which are:		
Railroad right-of-way	3,245	
Vacant Land	133,905	
	137,150	Sq. Ft. or
	3.184	Acres
Total Used and Useful	10,193	
Total Non-Used and Useful	137,150	
Total Area of Zone No. 6	147,343	Sq. Ft. or
	3.383	Acres

Zone 7: Description, area of used and useful and of non-used and useful portions.

66. Zone 7 contains 200,724 square feet or 4.608 acres. The land in this zone is vacant. There is a 50-foot strip along the South Platte River which is a part of the easement granted to the city by respondent. This zone is triangular in shape. It is bounded by 46th Avenue, the Chicago, Burlington & Quincy right-of-way, and the South Platte River, along which is the easement. The surface of the zone is considerably below the river embankment and the adjacent railroad tracks. The total area of the easement in this zone is 34,412 square feet or .79 acre. This zone lies across the Colorado & Southern Railroad, is south of Zone 6 and across 46th Avenue. It is the extreme southern portion of respondent's land and is vacant and unused.

As already pointed out the physical facilities of respondent are being extended in a northerly rather than in a southerly direction and there is no likelihood that pens or other stockyard facilities required by respondent will be constructed on this land at any time within the predictable future. Respondent claims that the land is being held for purposes of expansion. *Sufficient allowance has already been made of land for expansion purposes to meet the needs of respondent within the near future. It is not reasonable to include this zone in land for expansion and pass on to present shippers of livestock in the rates paid by them the carrying charges on a piece of land which is not likely ever to be used in handling any livestock which these may ship to market. In view of the fact that ample land for expansion purposes has already been included in other zones,* [4] it is found that the 200,724 square feet or 4.608 acres is not used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein.

Zone 8: Description, area of used and useful and of non-used and useful portions.

67. Zone 8 contains .759 acre of land or 33,062 square feet. This land is occupied by the truck manure dump under which runs a sewer belonging to the Union Pacific Railroad Company. This easement is a strip 6 feet wide. This zone is located in a triangle bordered by 46th Avenue, the Chicago, Burlington & Quincy right-of-way, and the Colorado & Southern right-of-way. The area in this zone is used by truckers for dumping manure from their trucks preparatory to taking on return loads of materials and commodities which they carry back with them to the country. These premises are furnished free of charge for truckers who do not choose to avail themselves of the cleaning and washing facilities adjacent to the truck chutes. It is found that the entire area in this zone, namely, 33,062 square feet or .759 acre, is used and useful in the rendition of

Petitioner's Note [4]—Italicized portion omitted from final report.

services, the *reasonableness* of the rates for which is being determined in this order.

Zone 9: Description, area of used and useful and of non-used and useful portions.

68. Zone 9 contains 7.081 acres of land or 308,448 square feet. The land in this zone is occupied by the horse and mule division, operated by the Colorado Horse & Mule Company and the stock show facilities of the Western Stock Show Association, a voluntary organization of various persons and businesses interested in the livestock industry. The horse and mule division consists of horse and mule barns, corrals, try-out lots, approaches and entrances, a blacksmith shop, roadways, and other smaller units. The Horse and Mule Company pays for the use of these facilities a rental of $1200 a year and 35c per head for each horse and mule sold in the division. The Horse and Mule Company furnishes its own light and water for the barns and sheds and half the water for its offices. The Horse and Mule Company vacates its premises when they are needed in connection with the exhibitions of the Western Stock Show Association. The horse and mule division is operated in most respects as other portions of respondent's property which is devoted to rendering stockyard services. Such differences as exist for the most part can be accounted for by the difference in character between horses and mules, which are handled in this division, and other species of livestock handled elsewhere in the yard. There is nothing in the record which would justify the exclusion of respondent's land devoted to the horse and mule division from the used and useful land used in the rendition of services for which are charged rates, the reasonableness of which is determined herein. The situation with respect to that portion of respondent's land in Zone 9 devoted to stock-show purposes is not so clear. The association which operates the show is a non-profit corporation without shares of stock. It pays no dividend. Memberships in the association were sold originally as a clever way of getting money for the

show and relieving the yard company of that expense. The livestock pavilion was built under the direction of the association which went down town and secured donations from various people for the building of this barn and the sales pavilion. [5] The show association has had revenues left over in certain years after paying rent. With these revenues they built a tile barn. Some years later respondent paid a deficit of $2,000 or $3,000 and took title to the barn because no rent had been paid in the past. Respondent feels that the sales pavilion belongs to it and it feels the same way about the tile barn. At various times it has absorbed deficits of the association. The evidence shows that the livestock show which is held in January tends to bring livestock to market during this month, which intervenes between two fairly heavy shipping seasons. It is claimed by respondent that the show tends to increase its receipts of livestock throughout the year. There is evidence to the effect that the livestock show has had a tendency to improve the quality of livestock in the Denver territory and that the auction sales promoted by the show bring to Denver buyers from wide sections of the country. There is testimony also to the effect that the prices received from livestock during the show week are from $1.00 to $1.50 per hundred higher than they are at other seasons of the year.

69. Not only are the facilities in Zone 9 used in connection with the stock show, but also some 200 pens in the south end of the yard are used for handling bulls. Other pens north of the Exchange Building are used for the holding of fat cattle. Feeder cattle, of which there are usually over 100 loads entered in the show, are yarded north of the fat cattle up to about the alley which is numbered 22. The facilities so used are on land already found to be used and useful. Regular yardage is charged on the livestock yarded in the main division of the yards and the revenues go into those of respondent. The yardage charges on animals sold

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Petitioner's Note [5]—Final report adds: "Which respondent otherwise could not have built. (See Agreed Abstract p. 694 and 695.)"

on the show property in Zone 9 accrue to the show association.

70. There is no doubt but that the stock show has increased the interest of stock growers in producing a better quality of livestock. The question of the wisdom of the livestock show cannot be doubted, but this is beside the point. The matter to be determined is whether or not respondent, who is a zealous member of the stock show association (which assesses entrance fees, grants concessions for a consideration, and solicits contributions from various Denver businesses) should absorb deficits which occur in connection with the show and pass those deficits on to all those who use the regular facilities of the yards. While the character of the business conducted by respondent would naturally cause it to be interested in the stock show, there seems to be no reason why it should be more zealous than certain other industries in the stockyard section. The fact that respondent's employees keep the books of the show association and respondent furnishes labor for a consideration during the progress of the show and supervises certain of the activities of the association does not warrant respondent in assuming whatever deficits may be incurred by the association. The stock show is a community enterprise. In such an enterprise respondent may be expected to have a keen interest and to make a reasonable contribution towards its success. That it does make such a contribution in the form of services rendered without compensation is amply supported by the evidence. The expenses incident to such services automatically go into the rates paid by the general shipping public. But to assume that it is the responsibility of respondent to underwrite all deficits incurred by the stock show association and to pass these on to shippers in the form of regular stockyard rates is to pass on to the public in rates an amount which in justice it ought not to pay. [6]

Petitioner's Note [6]—Final report at this point contains additional reasons advanced by the secretary for the exclusion of this property.

71. The area in Zone 9 devoted to the horse and mule division is *172,310* square feet. It is found that this number of square feet in Zone 9 is used and useful in the rendition of services, the reasonableness of the rates for which is being determined herein. The total number of square feet in Zone 9 devoted to stock show purposes is *136,138*. It is found that this number of square feet is not used and useful in the rendition of services for which are charged rates, the reasonableness of which is being determined herein. The following summary gives the land found to be used and useful and that found not to be used and useful in Zone 9:

Used and Useful	Square Feet
Land on which are:	
Horse and Mule Division—Barn No. 1	13,184
" " " " — " " 1 A	640
" " " " — " " 2	5,248
" " " " —Try-out Lot	17,653
" " " " —Barn No. 3	7,967
" " " " — " " 4	23,184
" " " " —Corral West of Barn No. 3	11,216
" " " " — " East " " No. 3	5,046
" " " " —Approach to Barns 3 and 4	9,199
" " " " —Lafayette Street Entrance	2,187
" " " " —Barn No. 5	12,084
" " " " — " " 6	14,416
" " " " — " " 7	12,000
" " " " —*Corrals*	9,400
" " " " —H and M Truck Chute	60
" " " " —Company Horse Barn	17,310
" " " " —Blacksmith Shop	3,920
Roadway N. E. Corner of Intersection C.B.&Q. & C.&S. R/W	7,596
Total Used and Useful [7] Sq. Ft.	172,310
or Acres	3.956

Petitioner's Note [7]—These figures changed in final report due to inclusion of Hook-up shed, pen, runover shed and Hook-up shed entrance as used and useful property.

Non-Used and Useful

Land on which are:	
Club and Store Building	4,927
Stadium	77,850
Sales Pavilion	5,765
Stadium Heating Plant	1,775
Hook-up Shed	5,780
Run-over Shed	1,357
Hook-up Shed Pen	12,207
Entrance to Hook-up Shed Pen	2,096
Stock Show Restaurant	4,250
Stock Show Hog Barn	17,606
Stock Show Wash House	2,525
Total Non-Used and Useful [7]	136,138 Sq. Ft. or 3.125 Acres
Total Used and Useful	172,310
Total Non-Used and Useful	136,138
Total Area of Zone 9	308,448 Sq. Ft. or 7.081 Acres

Zone 10: Description, area of used and useful and of non-used and useful portions.

72. This zone is separated from the other land owned by respondents by the main lines and switch tracks of the Chicago, Burlington & Quincy Railroad and County Road No. 83. It is the site of an abandoned gravel pit and is entirely vacant except for a hamburger stand operated by a squatter. The land is very irregular as a result of gravel excavation by its former owner, the Brannon Sand & Gravel Company. A land witness called *for respondent* testified that he placed a lower value on this land than he did when he testified at a *former* hearing and that at that time he and other witnesses attributed more value to the gravel than they did to the land. The witness is of the opinion that if he were to take a buyer out to see it the buyer would probably consider it worthless. He stated, however, that

Petitioner's Note [7]—These figures changed in final report due to inclusion of Hook-up shed, pen, runover shed and Hook-up shed entrance as used and useful property.

this land brought good value as a gravel pit and that it will bring a value for a dump heap when the city no longer has a place to dump refuse. Respondent claims that this land is used and useful for expansion. A witness called by the Government, who is familiar with respondent's property and operations, is of the opinion that this land is not used and useful.

73. The location and character of this land are such that it is unsuited to any general stockyard purpose at the present time. [8] It is isolated and lies across a road and a railroad track from the main body of the yards. It is in reality a wasting asset. Its potentiality as a source of gravel is already being exhausted. With a sufficient amount of vacant land already included in other zones to satisfy the requirements of respondent's growth for many years it does not seem fair to shippers to include this zone in the used and useful land of respondent when the character and time of the use are so problematical and so speculative. It is, therefore, found that the 100,319 square feet or 2.303 acres of land in this zone is not used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein.

74. A summary of land heretofore found to be used and useful and that found to be not used and useful is as follows:

Used and Useful	Acres	Square Feet
Zone No. 1	33.360	1,453,212
" " 2	22.147	964,741
" " 3	12.117	527,796
" " 4	10.725	467,142.5
" " 5	....	....
" " 6	0.235	10,193
" " 7	....	....
" " 8	0.759	33,062
" " 9	[9] 3.956	[9] 172,310
" " 10	....	....
Total Used and Useful	83.299	3,628,456.5 Sq.Ft.or 83.299 Acres

Petitioner's Note [8]—Mention in final report is made that due to irregularity of surface, leveling expense would be required.

Petitioner's Note [9]—These figures changed in final report to 4.448 and 193,750 respectively.

Non-Used and Useful		
Zone No. 1	4.907	213,744
" " 2	.835	36,352
" " 3	7.708	335,778
" " 4	7.997	348,567.5
" " 5	12.640	550,598
" " 6	3.148	137,150
" " 7	4.608	200,724
" " 8	....	....
" " 9	3.125	136,138
" " 10	2.303	100,319
Total Non-Used and Useful	47.271	2,059,170.5 Sq.Ft.or 47.271 Acres
Total Used and Useful		3,628,456.5
Total Non-Used and Useful		2,059,170.5
Total Area		5,687,627 Sq.Ft.or 130.570 Acres

STRUCTURES

General statement and findings:

75. The structures located on the land hereinbefore found to be used and useful are used by respondent inseparably with the land in rendering those services, the reasonableness of the rates for which is being determined in this order. It is found that all structures located on land herein found to be used and useful are themselves used and useful in the rendition of services, the reasonableness of the rates for which is determined herein, and that all structures located on land found not to be used and useful are not used and useful.

E. VALUATION OF RESPONDENT'S PROPERTY:

VALUE OF USED AND USEFUL LAND AND VALUE OF NON-USED AND USEFUL LAND

General statement:

76. Four witnesses testified as to the value of respondent's land. Three of them were called by respondent and

one by the Government. The three who were called by respondent served as an appraisal committee and submitted to respondent a joint report in which is set forth their opinion as to the value of respondent's land. This joint report is in evidence. The witness called by the Government also prepared a report setting forth his opinion as to the value of respondent's land. This report is in evidence. All four witnesses testified at the hearing, and were examined and cross-examined as to the factors which they considered in arriving at the respective values which they placed upon respondent's land. All the witnesses were men of long experience and unquestioned standing. The three called by respondent are all engaged in the real-estate business in Denver and have been for periods varying from 24 to 38 years. They are all members of the Denver Real Estate Exchange. One of them has served as a member of and as chairman of the Business and Industrial Property Appraisal Committee. He has managed important business blocks in the retail business district in the center of Denver and properties located in the financial district. He has also handled trackage and industrial properties.

77. Another of the witnesses called by respondent is president of a company which conducts in Denver a general real-estate business. He has had experience in the appraisal of land for local utilities, railroads, banks, industries, and other businesses. The third witness called by respondent has been engaged in the real-estate business in Denver for nearly 40 years and has had much experience in appraising property in and around Denver. He is the loan correspondent and appraiser for two large life-insurance companies in New York and for one in North Carolina. He has had experience in appraising real estate in San Francisco, Los Angeles, and elsewhere. For a time he was chairman of the Zoning Commission of the City of Denver and is a member of the Board of Adjustments. For nine years he has been a member of the committee of the Denver Planning Commission.

78. The witness called by the Government is a civil engineer whose training was had at Ohio State University. His practical experience began while in high school and continued throughout his formal professional training. He has had engineering experience and has done consulting work in connection with sewer and water construction disposal plans, garbage reduction plants, and for some time was a member of an engineering firm with offices at Painesville, Ohio. In 1916 he entered the service of the Interstate Commerce Commission as junior land appraiser and served in that capacity until the fall of 1917. After an interval of some three years he returned to the Interstate Commerce Commission with an assignment in the Land Appraisal Department. He held all positions in this department from junior land appraiser to assistant supervisor of land appraisals, in which capacity he served until early in 1928, when he became Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities. In the fall of 1929 he opened an office in Washington as consultant on railroad and utility regulation. In 1934 he became principal valuation engineer of the Packers and Stockyards Division, Bureau of Animal Industry, in the Department of Agriculture. In connection with his work in the Department of Agriculture he has given testimony in rate cases held for purposes of determining the reasonableness of stockyard rates for the Union Stock Yards Company of Omaha, the St. Joseph Stock Yards Company, and the Sioux City Stock Yards Company. This work was done under contract during the time he was engaged in private practice. He has made appraisals of the stockyards properties at Cleveland and Wichita as an employee of the Department. In those stockyard-rate cases in which he appeared as a witness his testimony was confined to the valuation of land.

79. The witnesses called by respondent placed a value of $1,645,552.50 upon the 131.045 acres of land owned by respondent at the time the appraisals were made. The witness called by the Government placed a value of $728,284

upon the same land. The value placed upon this land by witnesses called by respondent is more than twice as great as that placed upon it by the witness called by the Government. The witnesses called by respondent placed a value upon it greater by $917,268.50 than did the witness called by the Government. This discrepancy is too great to be accounted for solely by the difference in opinions which is reasonably to be expected between well qualified and competent land experts. It becomes necessary, therefore, to examine the methods followed by the various witnesses and the factors influencing them in arriving at their respective values.

80. The methods followed by the witnesses are set forth in their reports and in their oral testimony. In the land report comprising the appraisal of respondent's land the witnesses called by respondent stated jointly that, in arriving at the values which they placed on the various zones and the total value which they placed upon all the land, they personally inspected all the lands of the company giving consideration to their proximity to related and other industries and to various features having a bearing upon their adaptability and desirability for industrial uses, including that for a stockyards company; that they compiled a list of sales of properties in the neighborhood of the stockyards, and personally inspected the properties, checking, in so far as they deemed it necessary, with the grantors and grantees the consideration involved and that thereupon they appraised each zone placing what they considered a conservative value upon it; that in arriving at the value of the land they gave weight to the fact of the location of the yards and their convenient accessibility to the business district of Denver over paved streets; to the fact that the topography of the land is such as to lend itself to industrial development including stockyard uses, and to the fact that the land of respondent has available street-car and bus service into the City of Denver and bus service to all parts of Colorado and adjoining states; to the fact that six railroads with their connection furnish excellent transportation

facilities for livestock and products of the packing houses; to the fact that truck lines radiating from Denver supplement the railroads and serve rich irrigation districts in Colorado; to the fact that respondent's land is favorably located as regards dependable labor supply within easy walking distance and that there are good schools, churches, playgrounds, and a branch library accessible; to the fact that the facilities located on respondent's land have ample fire protection; to the fact that the district in which respondent's land is situated is the only part of Denver zoned for a business such as that conducted by respondent; to the fact that there are located in the district some fifteen allied industries such as packing houses, rendering companies, serum plants, and that there are other non-allied industries in the district; to the fact that there are sugar factories north of Denver, the by-products of which can be used in feeding cattle and sheep; and finally that the City of Denver is growing. In addition to this general statement each of the witnesses called by respondent testified orally as to the factors which led him to his conclusions as to the value of respondent's land.

81. The witness called by the Government likewise made a general statement with respect to respondent's land and included in that statement those elements which he considered in arriving at the value which he placed upon each of the ten zones into which the land was divided for purposes of appraisal. This witness began his investigation of the value of respondent's land sometime in November 1934. He received a transcript of a record in a prior hearing and copies of the exhibits introduced. He obtained from the Interstate Commerce Commission such information as it had on railroad valuations in Denver and had access to the Commission's record in Denver. He went to Denver on January 7 and left the 8th of February, dividing his activities between the land work and the supervision of the engineering and the inspection of the property of both phases of the work. He gave consideration to the topography, size, shape, and location of respondent's land with

respect to highways, railroad trackage, and to certain centers of value or development in that portion of the city in which the property is located. He also took into consideration the general nature of the surrounding development and the use to which the surrounding property is devoted, the improvements in the community such as schools, churches, and fire protection. He considered also the fact that the property of respondent is favorably situated with respect to street cars and local transportation and to the fact that city facilities such as water mains and sewage outlets are available to respondent's land. He compiled a list of sales which had taken place over a period of many years indicating the location of these sales with respect to respondent's land and described each of these sales in his report. He valued the lands as naked, unimproved vacant land and considered that all the adjacent property was in place and that the situation with respect to the surrounding property was unchanged in every respect. He gave weight also to the fact that the lands of respondent are especially adaptable for a stockyards utility. He looked upon the area as bare land lacking public streets and alleys. He gave little weight to the assessed value of the property. The sales information which he gathered covers land of varying degrees of similarity to the land being appraised. Some of these individual sales suffered a degree of disability in so far as their direct application to the determination of value is concerned. Many of them had taken place a great many years in the past. None of the sales considered constitute an area as large in size as respondent's land and for this reason the witness gave consideration to the element of plottage and assembly. He placed the value of the land at a suitable level such as one would reasonably expect to exist over a period of about six months prior to the making of the appraisal, and due to that fact he did not give depression or stagnation values to the land. His report contains tabulations of general business statistics in Denver.

82. A careful consideration of the appraisal reports reveals nothing which accounts for the great difference in

the values arrived at by the witnesses for each of the zones or for the land as a whole. For an explanation of this difference in value, as is testified to by witnesses called by respondent and the witness called by the Government, the oral testimony of the various witnesses has to be examined. This has been done hereinafter in connection with the testimony of the various witnesses given with respect to each of the ten zones into which the land was divided.

Value of land in
Zone 1:

83. All witnesses were in agreement that the highest and best use of the land of respondent is for stockyard purposes. They are of the opinion also that the value of Zone 1 has the highest value of any of the land in the general stockyards area, that is, the land west of the Chicago, Burlington & Quincy right-of-way. Witnesses for respondent divided Zone 1 into two areas, one of which is the land in the triangle south of the Exchange Building and between the Union Pacific right-of-way and the Chicago, Burlington & Quincy right-of-way. Upon the 3.6 acres in the triangle these witnesses placed a value of $15,000 per acre, and upon the remaining 34.934 acres in the zone they placed a value of $17,500 per acre. The total value placed upon the smaller portion was $54,000 and that placed upon the larger was $611,345, a total of $665,345 for the 38.534 acres. This total value includes that portion of Zone 1 which was sold to Armour & Company. The witness called by the Government did not sub-divide this zone, but valued it as a single parcel of land. He placed a value of $8,500 an acre upon the zone as a whole, or a total of $327,539 for the 38.534 acres.

84. A careful reading of the oral testimony of the witnesses called by respondent leads to the inescapable conclusion that while they visualize respondent's land as stripped of all improvements and available for industrial uses generally they considered not merely the availability of the land for all uses and purposes including its availability for

stockyard purposes but that they attached peculiar weight to the actual and profitable use to which the land is being put as a stockyard. That this is true is borne out by the following statement by one of the witnesses called by respondent: "What I meant when I answered * * * * * that if pens were constructed on Zone 3 it would increase the value of Zone 3, is that any appraiser in appraising land for industrial uses necessarily figures into his valuation the potential value of the site. Perhaps I should not limit this solely to industrial appraisals. Here in Denver we use statistics covering the number of people passing certain corners, and these figures are compiled by the University of Denver School of Commerce. I think these facts are recognized by all appraisers. The same thing is true in a certain measure in industrial property. If a particular site has clearly a highest and best use, I do not believe any appraiser can overlook the utilization of the tract, and therefore its potential value or potential earnings to a concern engaged in the highest and best use. If pens were on the tract north of Race Court in Zone 3, it would mean that the highest and best use, which all of us, including the Government appraiser, have recognized, namely the stockyards use, had come up to some of the potentialities as we saw them, viewing the land as naked land on March 23, 1935, and since those potentialities would have actually been realized by the construction of pens, this area would have tied in closely and become a part of the main area (namely Zones 1 and 2) as an enlargement of that area. Hence, the value of Zone 3 would then more nearly approach the value of the main tract than it did on March 23, 1935".

85. This same witness looked upon certain land as "land necessary for expansion". He did not limit the expansion solely to stockyards, but to any large industrial use such as steel mills, which, as its business grew would bring land on the outside into more intense use. Questioned as to the effect of construction on such lands he replied: "Yes, I would think that if the expansion lands which I have mentioned were built up with pens or covered with

railroad tracks it would add to their value". This same witness gave it as his opinion that he could sell the stockyards land at the value he had placed upon it to a stockyards industry; that he did not know as to whether he could sell the land at that value to another industry such as to a steel plant, but that he believed he could though he might have to hold the land for a year or two, but that he does not know of any industry that has made a bona fide attempt within the past five or ten years to secure 131 acres of land in or near Denver.

86. Another witness called by respondent is of the opinion that the easiest way to sell the land would be to offer it to someone wanting to go into the stockyard business. He thinks it would be an easy matter to secure some other stockyard to buy the property at the value at which witnesses for respondent have appraised it. He is of the opinion that it could be sold at the value at which these witnesses appraised it within a fair time which might be a year or two. He is of the opinion that he could sell it at that price for stockyards purposes within a period not to exceed three months. This same witness stated: "It is beneficial to any business to have increased business. It creates values for adjoining land and gives industry a potential earning power. In 1930 we tried to keep away from that (giving any weight to the fact that the stockyards was doing a good business or doing business at all) and think we did, but having had an experience of one appraisal we have been very careful, more careful in this appraisal to keep away from that than we might have been in the other. Now, I will not say that we did, but you have in mind all the time that there is an industry there and the whole thing is to keep in mind the use of the property for the highest and best purpose (stockyard purpose) that it can be used. We considered the property for the highest and best use * * * did give thought to the intensive use of the land".

87. Another land witness called by respondent testified as follows: "Yes, I think I could sell the stockyards land

today if they were vacated. My first effort would be for a stockyards industry, and as to whether any other industry could be found to take such a tract, that is a matter of effort on the part of the salesman. I think it is possible. Personally, I do not think I would go outside of the stockyards industry, bearing in mind that the packing houses and related industries are all in place as they are today. It seems to me that it would require no particular effort right in the city of Denver to secure a purchaser for that piece of land with all other industries in place. No, I did not say that I felt no other industry would take 131 acres. After I had exhausted the stockyards chance it seems to me that an oil refinery, a steel mill or a smelter or something in the rubber industry might be found to use the tract. Yes, it has been some time since any industry requiring 131 acres has located in Denver. I could not say just how long. The Chamber of Commerce's efforts in this regard have evidently not met with success."

88. Again this same witness testified: "Accessibility and utility are not wholly synonymous. Utility is the use of the tract. Yes, accessibility is one of the elements of value and utility is another. Utility also means usefulness but that does not necessarily mean the ability to make money. What I considered was the use to which the land could be put; the element of the ability of the land to make money applies to their use. I considered it in connection with the stockyards area from the standpoint of potential use. Yes, I mentioned the fact that the land was available for any industry, but it is true that no industry within my memory has sought an acreage of that extent in the city of Denver."

89. Other testimony shows that while the land witnesses called by respondent visualized the land as vacant, they unconsciously thought of it as actually in use for a stockyard. This is particularly true with respect to the so-called Blayney-Murphy sale discussed more fully hereinafter (see paragraphs 90-91). On this land, which lies

directly across the Chicago, Burlington & Quincy right-of-way from respondent's property, there was constructed a few years ago a packing plant on land assembled for that purpose. A viaduct was constructed from the packing company across the railroad on to respondent's land. Other expenditures were incurred for a railroad siding, grading, surfacing, and for legal services. The cost of the viaduct was $40,000. With respect to this viaduct one of the witnesses stated: "In my opinion, those additional expenditures must be considered in determining the per-acre cost of this triangular tract because they were necessary to make the tract properly accessible to the stockyards". Another testified as follows: "I considered the land in Zone 1 to be of equal value, if not greater value than the land in Zone 9, because the land in Zone 1 is the very heart of the stockyards district." Still another testified: "As to the stockyards, there is only one piece of property in Denver that is available for stockyard purposes and that lessens competition in property for sales for that purpose and when you lessen the competition in property for any purpose it creates a higher value for that property for that purpose."

90. As already pointed out all witnesses listed sales of land made over a long period of years within varying distances of respondent's land. Witnesses called by respondent listed in their report 11 sales which they said they took into consideration in arriving at the value which they placed upon this zone. The first of these sales was from the Hollis-Platt Horse Company to the Denver Union Stockyard Company on August 3, 1918. Witnesses estimated the value of this land at the time of the sale at $19,340 per acre. This land consisted of a series of lots located in a block in which there was a bank and a hotel. They are near some retail establishments and a residential section and are easily accessible to 46th Avenue. They are across the Chicago, Burlington & Quincy Railroad right-of-way and at a considerable distance from Zone 1. The character of this land and its location are quite different from that in Zone 1. The land in this sale is more nearly similar to

that which would be found in a retail and business section than in an industrial section. The second sale to which they gave consideration was one from Gordon B. Hollis to Joseph P. Murphy on August 23, 1924. This also was a sale of a series of lots in the sub-division known as West Elyria. This property fronts 250 feet on Humboldt Street and 125 feet on 47th Avenue. It is in the same general section as sale No. 2. On the land are horse barns and sheds which are being used as a sales barn and feed lot for horses and mules. This property lies across the Chicago, Burlington & Quincy Railroad from the respondent's land and is dissimilar so far as the location and potential use are concerned. The land in this sale is now being held for $22,500. Sale No. 3 is one from Gordon B. Hollis to the Drovers National Bank on January 8, 1920. This was of two lots. The indicated land value, as stated by witnesses, was $17,500 or $121,960 per acre. Sale 5, which was given consideration by witnesses is in the form of a lease of land belonging to the stockyards company and leased to the railroads which serve respondent and the industries in the packing district. The other sales considered by witnesses were 10 to 15, inclusive, and sale 24. These sales are those which took place in the assembling of the Blayney-Murphy tract. The total land purchased by the Blayney-Murphy Company was 8.649 acres. With respect to the hearing of sales upon the value which witnesses placed upon Zone 1, one of them testified: "In Zone 1 we had to go outside of the stockyards district to find lands comparable. We found none that I considered of similar or equal value, but we figured that those lands reflected the values in Zone 1". Another of the witnesses called by respondent stated: "I do say that the valuation of the stockyards is very hard to establish by any sales that have been made in the immediate vicinity. There are a few sales that are comparable with lands in the stockyards and I have appraised the value of the stockyards by my experience and best judgment of this character of property. We considered the sale, but I do not think you can appraise the

value of stockyards ground by sales that have been made in that vicinity. There are not sufficient sales to place a valuation on such a large tract of ground as that, and it has to be appraised by experience and better knowledge of relative values in this section and other sections in the city." With reference to the land in the Blayney-Murphy tract one of the witnesses stated that: "The Blayney-Murphy tract, I do not consider, does not reflect the value in Zone 1, but Zone 1 reflects the value out there. I use it as corroborative of the opinion I formed of land in Zone 1". Another of these witnesses testified as follows: "Yes, I think we would have reached the same conclusion as to value if we had ignored the sales on all the property."

91. The witness called by the Government listed among the sales considered by him some of those enumerated as having been considered by witnesses called by respondent. He is of the opinion that sales Nos. 1, 2, and 3 by witnesses called by respondent are not indicative of the value of land in Zone 1 for the reason that one of them is a small corner lot occupied by a bank and that the other two are so far removed from Zone 1 and are of such different character as to location and potential use as to make the selling price of no worth in arriving at the value of Zone 1. Witnesses called by respondent state that whether they considered the cost of the land in the Blayney-Murphy tract, or whether they considered as the value of the land the cost of the land itself together with $40,000 expended on the viaduct and certain other expenses bringing the total amount up to $89,717.75 for the 8.649 acres, would have had no effect upon the value which they placed upon Zone 1. Witness called by the Government did give consideration to the cost of the Blayney-Murphy tract. He was of the opinion, however, that the viaduct leading from the Blayney-Murphy plant across the Chicago, Burlington & Quincy Railroad is a plant facility and that its cost of construction is not a land cost. This opinion seems to be warranted for the reason that the inclusion of the $40,000, the cost of the viaduct, with the land would be justified, if at all, only on

the assumption that a stockyard existed on respondent's land. This is contrary to the fundamental hypothesis that in arriving at the value of land it must be considered as naked available for stockyard purposes, but not in use for that purpose. They would include also in land value the cost of a railroad siding, the cost of construction of which was $5,413.27. If the purchase price of the land, the cost of the grading, the cost of levelling and the legal expense incurred in acquiring land should all be included with the cost price of the land itself the value of the Blayney-Murphy tract at the time of its acquisition would be approximately $5,100 per acre. If the cost of the land be computed as witnesses for respondent think it ought to be the value of this tract is $10,373 per acre.

92. Respondent's contention is that the improvements are necessary in order to make this land comparable to the stockyards land. Even if this were true, the value of the land in Zone 1 would not reach the figure which witnesses called by respondent have placed upon it, namely, $17,500 per acre, for the greater portion of it and $15,000 per acre for what they term the "triangle". If the improvements be left out of consideration, and the Blayney-Murphy land after being levelled is compared with land in Zone 1, the general impression to be gained from the testimony of all witnesses is that the Blayney-Murphy land is less valuable than the land of respondent in Zone 1. It is also the general impression to be gained from the record that the cost of the Blayney-Murphy tract reflected somewhat the fact that the sellers of the land received all their land was worth. The witness who assembled the Blayney-Murphy tract testified: "Yes, I assembled the Blayney-Murphy tract. I think the people that sold got a good stiff price but not more than the property was worth for the use to which it was put."

93. *As already pointed out the witness called by the Government gave no weight to the sales in the neighborhood of Lafayette Street, Humboldt Street, and 46th Avenue.*

Perhaps he should have given some weight to these sales. Had he done so his value would have been somewhat above that which he placed on Zone 1. After giving due consideration to the character of the land in Zone 1 as compared with the character of contiguous and nearby land and after giving some consideration to the high-priced land in the vicinity of 46th Avenue, Lafayette Street, and Humboldt Street and considerable more weight to the cost of the land in the Blayney-Murphy tract, excluding, however, the cost of the spur track and the viaduct as cost of land, and taking into consideration other sales of lower priced property, [10] it is found that the value of the land in Zone 1 owned by respondent is $9,000 per acre or $300,240 for the 33.36 acres in this zone heretofore found to be used and useful in the rendition of services, the reasonableness of the rates for which is being determined in this order, and $44,163 for the 4.907 acres found not to be used and useful in the rendition of such services. [11]

VALUE OF USED AND USEFUL LAND IN ZONE 2:

94. Zone 2 contains at the present 22.982 acres (after the Armour sale), of which 22.147 acres have been found to be used and useful and .835 acre not used and useful. Witnesses called by respondent placed a value of $15,000 per acre upon this land and stated that this value is supported by sales 10 to 15 (the Blayney-Murphy tract) and by lease No. 5, which is a joint lease by the Denver Union Stock Yard Company to the six railroads under date of August 1, 1921. The witness [12] called by respondent placed a value of $15,000 per acre on the land in Zone 2 and stated that the value of the zone is arrived at by giving considera-

Petitioner's Note [10]—Final report adds at this point: "and all pertinent testimony of record bearing upon the value of respondent's land in Zone 1,"

Petitioner's Note [11]—The final report reduces valuation on used and useful land to $8,500 per acre, or a total of $283,560; and to $41,710 for the 4.907 acres of the land found to be non used and useful.

Petitioner's Note [12]—Final report shows this witness to have been called by the Government and placed a value of $5,000 on the land in Zone 2.

tion to the same supporting data used in Zone 1 with a scaling down on account of the greater distance of the area from the more developed portions of North Denver. The witness called by respondent also looked upon the land in Zone 2 as less valuable than a portion of Zone 1, but equal in value to that portion of Zone 1 lying south of the Exchange Building. One of the witnesses stated that judged from the industrial use standpoint the lands in Zone 1 and Zone 2 are very similar, that Zone 2 is equally adaptable for industrial purposes as the land in Zone 1, but that it is a little further removed from the peak of trading activities and has, therefore, a slightly diminished value in relation to Zone 1. He states that for the purposes of utility it is just as ideal as Zone 1.

95. It has already been pointed out why the values placed upon Zone 1 by witnesses called by respondent cannot be accepted. The same reasons which led to this determination lead to a like determination with respect to the value placed by them upon the land in Zone 2. *It is possible, of course, that witnesses may be in error as to the absolute values of these two parcels of land and yet correct with respect to the ratio of the values.*

96. The witness called by the Government placed a value of $5,000 per acre upon this land as contrasted with $8,500 per acre on the land in Zone 1. With regard to the difference in value between these zones, the witness was not considering the market activity on the zones at the present time for the reason that if the lands were stripped of their present improvements it is impossible to tell whether the stockyard arrangements would be rebuilt the way it has been even though the property is being valued from the standpoint of the highest and best use. He states that a shading down of values from Zone 1 to Zone 2 is not on the basis of actual use which is being made of the property. He feels that the higher levels of values would exist at the southerly portion of the zone because it has a more direct access and is closer to the zone itself. He

is of the opinion that Zone 2 should have a lower value than Zone 1. If Zone 2 were stripped of all improvements the only access to it would be through Race Court and the north end of Franklin Street.

97. The testimony with respect to Zone 2 is such as to make it unnecessary to discuss the various sales and leases which may have a bearing on its value. These have already been discussed in arriving at the fair value of the land in Zone 1. It becomes a matter, therefore, of the extent to which the value of Zone 2 should be shaded down from that of Zone 1. Witnesses called by respondent think that Zone 2 is as valuable as a portion of Zone 1 and only a little less valuable than the other portion. The witness called by the Government is of the opinion that the land in Zone 2 is considerably less valuable than the land in Zone 1. The question of the value of Zone 2 turns then largely upon the situation of this land with respect to industries, other than that conducted by respondent, in the packing district. Leaving out of consideration the railroad tracks of respondent, this tract has railroad facilities on two sides. It has an improved street on the entire northerly boundary and a roadway on a portion of the westerly side. It is contiguous to the property of Armour & Company and is on the whole as conveniently located with respect to the Cudahy Packing Company as Zone 1. It is less conveniently located with respect to Swift & Company than is most of Zone 1. It is farther removed from the main activity in the packing district than is Zone 1. None of the witnesses attempted to make any mathematical computation as to the relative values of these two zones. No such mathematical computation seems to be possible. If one were made it would depend upon hypotheses resting upon personal opinion and the result of such a computation would still be a matter the validity of which depends upon the exercise of a reasonable judgment. A careful consideration of all the evidence with respect to this zone leads to the conclusion that it is less valuable than Zone 1; that witnesses called by respondent have not made a sufficient

reduction from the value of Zone 1; *and that the witness for the Government has made a reduction somewhat larger than the facts seem to warrant.* It is found that the value of the land in Zone 2 is $6,000 per acre, and that the value of the 22.147 acres found to be used and useful is $132,882 and that the value of the .835 acre found to be not used and useful is $5,010. [13]

VALUE OF USED AND USEFUL LAND IN ZONE 3:

98. Zone 3 contains 19.825 acres of which 12.117 acres have heretofore been found to be used and useful (paragraph 52) and 7.708 acres have been found to be non-used and useful. Witnesses called by respondent placed a value of $8,000 on this land and supported that value by a lease of the Denver Union Stock Yard Company to the Union Pacific Railroad of 9200 square feet of right-of-way extending to the feed lots located in this zone. They supported it also by the sale of approximately 366 square feet by the Northwestern Terminal Railway Company to the City and County of Denver for a consideration of $150.

99. The witness called by the Government placed a value of $3,500 an acre on this land. He stated that he valued this land relative to the value which he placed upon Zone 1 and that he gave due regard for the cost of the land which, with a part of Zone 2, was purchased from the Riverside Cemetery Association in 1916 for $3,000 per acre.

100. One of the witnesses called by respondent stated that the capitalized value of the lease covering the 9200 square feet of right-of-way leased to the Union Pacific is at the rate of $8,772 per acre. He stated that this land is needed for expansion as business of the stockyards increases. It was this witness who said that when pens were constructed on this zone its value would more nearly approach the value of the main tract than it did on March 23, 1935.

Petitioner's Note [13]—Final report changes values to $5,000 per acre making total used and useful value $110,735, and non-used and useful value $4,175.

101. The witness called by the Government took into account the accessibility of Zone 3 and the rail connections other than respondent's tracks which are upon it. He thinks that the fact that Race Court is on the southern boundry of this zone gives it an accessibility which the land would not have if Race Court were shifted northward to the county line. He is of the opinion, however, that the shifting of Race Court would make the tract more available for an uninterrupted use than it has at present. The witness is of the opinion that it would be feasible to get railroad trackage to this land either from the Burlington Railroad or from the Northwestern Terminal. Two sales near this land are known as the Local Beef & Mutton Company sales. These sales occurred in 1922 and 1920 and were at the rate of $3,000 per acre, and the land is subject to overflow. The witness thinks that this land is not worth what was paid for it. One of these sales consisted of 1.41 acres and the other of 1.34 acres purchased from the Fairmont Cemetery Association, the same association from which respondent purchased in 1916 all of Zone 3 and other lands in Zone 2.

102. These sales and the sale and lease referred to by witness for respondent are all very small when compared with the total area of Zone 3. All witnesses shaded down the value of Zone 3 from that of Zone 2, all of them giving it a value per acre of more than half of the value per acre placed upon Zone 2. It is found that the value of this zone is $3,500 per acre and that the value of the 12.117 acres found to be used and useful is $42,409.50 and that the value of the 7.708 acres found not to be used and useful is $26,978.

VALUE OF USED AND USEFUL LAND IN ZONE 4:

103. Zone 4 contains 18.722 acres of which 10.725 acres have been found to be used and useful and 7.997 acres have been found to be non-used and useful. The land in this zone is that heretofore described as lying between respondent's hog and sheep division, Armour & Company's plant,

and Swift & Company's plant on the east, and the South Platte River on the west. Witnesses for respondent divided this land into two portions. One portion contains 16.382 acres which does not require filling; the other, 2.34 acres which does require filling. On that portion not requiring filling they placed a value of $12,000 per acre or $196,584 and on the other portion they placed a value of $10,000 per acre or $23,400. The total value which they placed upon this zone was $219,984. This zone contains railroad trackage belonging to respondent and used jointly by the railroads which serve the yards. Witnesses for respondent took into consideration the right-of-way leased by respondent to the railroads and the reflected values of Zones 1 and 2. They stated that the lease on the land by respondent is on the basis of $8,772 per acre and that the total cost of grading to bring the land up to stockyard level was $30,000 and that the average capitalized value of this land on this basis is $15,834 per acre. They mentioned in their report no sales on which they relied to determine the value of this land.

104. The witness called by the Government placed a value of $2,500 per acre on this land. He gave some consideration to the sales discussed in connection with other zones and in addition he considered a series of sales numbered from 114 to 126. Some of these sales are of small portions of land; some of them were distressed sales, which throw little light upon the value of the land in this zone. In the case of the land involved in one sale from one packing company to another, the 2.7 acres involved were carried on the books on December 31, 1930 at $2,500. It is reported that the seller of this land considered it of a value of $10,000 per acre. A portion of this land later sold in a distressed transaction which throws no light upon its value. Another sale which took place in the vicinity of this zone was of 2.4 acres by respondent to a packing and provision company at a price of $1,000 per acre. Most of the sales in this series were of land at less than $3,000 per acre. A few were at a figure above $3,000. None of these sales involved

any considerable acreage. Giving some consideration to the sales which have taken place within varying distances from Zone 4 and the character of the land itself and to its location with respect to other more valuable land owned by respondent, it is found that the value of Zone 4 is $2,500 per acre and that the value of the 10.725 acres heretofore found to be used and useful is $26,812.50 and the value of the 7.997 acres found not to be used and useful is $19,992.50.

VALUE OF NON-USED AND USEFUL LAND IN ZONE 5:

105. Zone 5 contains 12.64 acres all of which has been found to be non-used and useful. Witnesses called by respondent placed a value of $3,500 per acre on the land or a total of $44,240 for the entire tract. In support of this valuation they use a series of sales, some of them to the City and County of Denver made in connection with the improvement of the Platte River. One of these is of 7.29 acres for $26,600, or $3,548 per acre. Another is the so-called Ruedy Products sale of approximately one acre at the rate of $3,562 per acre and another by the same company to Meyer and Dave Averich of something over an acre at the rate of $2,584 per acre. Another sale took place between the same parties and the land involved brought $3,000 per acre. Another sale was from the Fairmount Cemetery Association to private parties of something less than an acre at the rate of $2,500 per acre.

106. The witness called by the Government placed a value of $2,000 per acre on this zone. He gave consideration to a series of sales numbered 114 to 127, some of which have already been discussed in connection with the land in Zone 4. Giving due consideration to the character and location of this land with respect to industries in its locality and some consideration to the sales of these small areas of land, it is found that the value of this land is $2,000 per acre or $25,280 for all of the zone, heretofore found to be non-used and useful.

VALUE OF USED AND USEFUL LAND IN ZONE 6:

107. Zone 6 contains 3.383 acres of which .235 acre, used as a roadway, has been found to be used and useful and 3.148 acres, of which a small portion is used for a railroad right-of-way and the rest of which is vacant land, has been found to be not used and useful. Witnesses for respondent placed a value of $10,000 an acre on this land or a total of $33,830 and supported this value by a sale of 2.7 acres by the Burkhardt Packing & Provision Company to the Western States Packing Company in 1928 at a price of $10,000 per acre. The witness called by the Government placed a value of $4,000 per acre on this land or a total value of $13,532. This witness states that this zone is valuable for small packing-house development and due to the nature of the terrain would require more than the usual expenditure for heavy foundations. In arriving at the value which he placed upon the land this witness gave consideration to sales in the so-called Union Pacific Industrial development and to sales by the stockyard company to the Burkhardt Packing Company and the Union Rendering Company. This witness gave little consideration to the Burkhardt offer to respondent of $10,000 per acre for acreage in Zone 6 because of the divergence between this amount and the value at which the land was carried on the books of the Western States Packing Company, successor to the Burkhardt Packing & Provision Company. On the basis of all the information in the record with respect to the character and location of this land and with due consideration to the sales of parcels of land in this vicinity it is found that the value of the land in this zone is $4,000 per acre and that the value of the .235 acre heretofore found to be used and useful is $940, and that the value of the 3.148 acres found to be not used and useful is $12,592.

VALUE OF NON-USED AND USEFUL LAND IN ZONE 7:

108. There are in this zone 4.608 acres of land, all

of which has been found to be not used and useful. Witnesses called by the respondent valued this land at $4,500 per acre or a total of $20,736. They stated that this value is supported by their sales 25, 33, 34, 35, and 36. This is a series of sales of small parcels of land some distance south of respondent's property. In 1920 the American Smelting & Refining Company sold to the City and County of Denver about 41 acres on which there had formerly been a smelting plant. The land was practically a slag dump. The purpose of the city in purchasing the land was to buy some 300,000 or 400,000 cubic yards of slag which might be crushed and used. After the slag had been removed there were some 300,000 cubic yards of first class gravel in the tract. After the land had been bought by the city an offer of $7,500 and later one of $10,000 was made to the city for the land with the provision that the city might reserve the slag for its own use. The price per acre paid by the city for this land was $1,220. This sale hardly represents a straight-out land sale. Another sale considered by the witnesses called by respondent was one of Union Pacific Railroad Company to the National Fuse & Powder Company. The area involved in this sale was slightly more than an acre and the price paid was $3,532 per acre. The land is rough and has no street frontage. In order to reach it from the street an arroyo about 20 feet deep would have to be filled on the northeast; a deep open cut shuts off approach from that direction. This property has no trackage facilities. It is less favorably situated than is the land in Tract 7. Another sale was one from the Union Pacific Railroad Company to the City and County of Denver in 1932. The area of the land involved was .92 acre. The sale price was $2,174. This land fronts on no street and was used by the city to provide an outlet for a storm sewer. This land is less favorably situated than is the land in Zone 7. The City and County of Denver in 1929 sold 2.8 acres to the National Fuse & Powder Company for $7,000. This is a price of $2,500 per acre. This land fronts on no highway or street. Another sale con-

sidered by witness called by respondent was one from Simon J. Feely to the National Fuse & Powder Company in 1929. The area of land is 1.83 acres and consists of a series of 26 lots. These lots are located in a block bounded by 38th Street, Brighton Boulevard, and Delgany Street. These lots lie at a considerable distance south of respondent's property and on the main boulevard leading from the packinghouse center into the city. These lots are much more favorably situated than is the land in Zone 7.

109. The witness called by the Government placed a value of $3,000 per acre on this zone. He stated that the same sales information was considered by him as was the case in Zone 6, due regard being had for the triangular shape of the parcel and the difficulty of efficient industrial development on the southerly point. When respondent sold the County and City of Denver land for the purpose of widening 46th Street, it retained the privilege of building railroad tracks under, over, or at grade with 46th Avenue. A witness called by respondent is of the opinion that, because of this right retained by respondent, Zone 7 has accessibility to the industrial tract. The zone as such is not now served by the railroad, but in his opinion rails could easily be brought into the zone. The conclusion to be drawn from all the evidence with respect to this zone is that it is more valuable than some of the sales enumerated by the witnesses called by respondent, but that it is less valuable than the solid city block of lots cited by them. On the basis of all the testimony it is found that the value of Zone 7 is $3,000 per acre and that the value of the 4.608 acres hereinbefore found not to be used and useful is $13,824.

VALUE OF USED AND USEFUL LAND IN ZONE 8:

110. Zone 8 contains .759 acre, all of which has hereinbefore been found to be used and useful. Witnesses for respondent placed a value of $10,000 per acre upon this ground or a total of $7,590. This zone is a triangle with its longest side fronting on 46th Street. The Colorado & Southern

Railroad right-of-way and the Burlington right-of-way border it on the other two sides. In valuing this land witnesses called by respondent took into consideration the street frontage of this land, the nearness of it to the stockyards and to the business district of Elyria. *This is another instance in which witnesses unconsciously use as a standard of value for a piece of respondent's land the use to which the bulk of its land is being put.* One of the witnesses testified that as regards this zone the land is so close to the main body of the stockyards that it is not affected by the depression.

111. The witness called by the Government valued this land at $6,000 per acre, or a total of $4,554. This zone in his opinion is available for a gasoline station or some like development or it has the possibility of being used for a minor industry which might have railroad trackage available from the Union Pacific and Colorado & Southern joint track. Its shape, however, in all probability precludes its use for any important industrial development. On the basis of all the testimony it is found that the value of this zone is $6,000 per acre and that the total value of the entire zone, namely, .759 acre heretofore found to be used and useful, is $4,554.

Value of used and useful land in Zone 9:

112. The land in Zone 9 contains 7.081 acres of which 3.956 acres have heretofore been found to be used and useful and 3.125 acres to be not used and useful. Witnesses called by respondent placed a value of $20,000 per acre upon this land or a total value of $141,620. The witness called by the Government placed a value of $15,246 an acre upon this land or a total of $107,957. All the witnesses considered numerous sales which have been made in the vicinity of this zone. One set of sales is the so-called Union Pacific development near the intersection of 46th Street and Brighton Boulevard. Another sale to which much attention was

given was that of the Murphy barn and lot, which is listed by the witness called by the Government in his report as Sale No. 21. This report gives the consideration for the land as $6,000 and the consideration for the improvement thereon as $16,000. The evidence is clear that regardless of the relative values of the land and improvements there is a reversal of figures and that the source of information gives the value of improvements as $6,000 and that of the land as $16,000. The area involved was slightly less than an acre. Most of the sales which are involved in the Union Pacific industrial development are at figures considerably below the value per acre placed upon Zone 9 by witness called by respondent. In the few cases where the per-acre sale price exceeds that placed upon Zone 9 by witnesses called by respondent the areas are so small as not to be indicative of the value of the land in this much larger zone. As heretofore pointed out the land in this zone is more of a retail character than of an industrial character such as the lands of respondent lying across the Chicago, Burlington & Quincy Railroad. The evidence is clear that the sales in the Union Pacific industrial development were bona fide sales.

113. Giving due consideration to the character of this land, its location to the sales which have taken place around it, and to the fact that the prices of the land and improvements were interchanged in the Murphy sale, it is found that the value of the land in this zone is $16,000 per acre and that the value of the 3.956 acres, heretofore found to be used and useful, is $63,296 and that of the 3.125 acres, heretofore found to be not used and useful, is $50,000. [14]

Value of Non-Used and Useful Land in Zone 10:

114. Zone 10 contains 2.303 acres, all of which heretofore have been found to be not used and useful. Witness

Petitioner's Note [14]—In final report used and useful acreage was placed at 4.448, total value $67,814; non-used and useful acreage was placed at 2.633, total value $40,143; value per acre set at $15,246.

called by respondent placed a value of $2,500 an acre upon this land or $5,757.50 upon the zone. The witness called by the Government placed a value of $1,500 per acre upon this zone or a total of $3,455. This land is practically unusable for any other purpose than the mining of gravel. It lies across the Chicago, Burlington & Quincy Railroad and County Road No. 83 from the main body of respondent's other land. One of the witnesses called by respondent referred to its potential value as a dump heap and to the fact that one looking at the land would perhaps consider it worthless. All witnesses supported the values placed upon this land by various sales which have taken place at varying distances from the zone. A small triangular portion of this zone was sold by respondent as a filling station site at the rate of $3,500 per acre. A number of sales listed by witnesses called by respondent were made at about $3,000 per acre. Giving consideration to all the information in the record with reference to this zone and to the depleted condition of the gravel pit on it and its lack of suitability for any other purpose, it is found that the value of the 2.303 acres, all of which has heretofore been found to be not used and useful, in this zone is $1,500 per acre or a total of $3,454.50.

115. A summary by zones of the value of the land of respondent hereinbefore found to be used and useful and of that found to be not used and useful is as follows:

Zone	Price per Acre	Total Area Acres	Total Area Total Value	Used and Useful Acres	Used and Useful Total Value	Not Used and Useful Acres	Not Used and Useful Total Value
1	$ 9,000	38.267	$344,403.00	33.360	$300,240.00	4.907	$ 44,163.00
2	6,000	22.982	137,892.00	22.147	132,882.00	.835	5,010.00
3	3,500	19.825	69,387.50	12.117	42,409.50	7.708	26,978.00
4	2,500	18.722	46,805.00	10.725	26,812.50	7.997	19,992.50
5	2,000	12.640	25,280.00	....	....	12.640	25,280.00
6	4,000	3.383	13,532.00	.235	940.00	3.148	12,592.00
7	3,000	4.608	13,824.00	....	....	4.608	13,824.00
8	6,000	.759	4,554.00	.759	4,554.00	....	....
9	16,000	7.081	113,296.00	3.956	63,296.00	3.125	50,000.00
10	1,500	2.303	3,454.50	....	....	2.303	3,454.50
	Total	130.570	$772,428.00	83.299	$571,134.00	47.271	$201,294.00

[15]

Petitioner's Note [15]—The tabulation in the final order differs in Zones 1, 2 and 9 by reason of reductions in land values made by secretary.

VALUE OF RESPONDENT'S USED AND USEFUL STRUCTURES AND EQUIPMENT AND VALUE OF NON-USED AND USEFUL STRUCTURES AND EQUIPMENT

General statement:

116. Two witness were called to testify on the value of respondent's structures and equipment. One of these was the engineer who testified with respect to respondent's land. His qualifications have been given hereinbefore. The other witness, who was called by respondents, is an engineer and architect of wide experience. He is vice president of the American Appraisal Company, and has had many years' experience in connection with construction and has had ample opportunity to observe the operations of stockyards plants including the yard of respondent. No question was raised in the hearing as to his qualifications. None is raised here. He is thoroughly competent and widely experienced.

117. The engineer called by the Government testified that the cost of reproduction of respondent's structures and equipment, that is, the total cost of material and labor together with overheads, is $2,525,150. Counsel for respondent stated on behalf of respondent that it would accept as correct this cost of reproduction new of its property, provided a slight adjustment be made on account of an error in inventory in the water and sewer systems. These adjustments were made and later introduced in evidence by the Government. The engineer for the Government stated that in valuing the property he reached his conclusion upon the basis that the material was in place and that the property is able and willing to function as a stockyard, that is, as a business earning income. The total cost of reproduction new of all respondent's structures and equipment, together with direct construction overheads but not indirect overheads, of $2,525,150 was allocated in accordance with a finding hereinafter made, $2,114,699 to used and useful structures and equipment, and $410,451 to non-used and useful structures and equipment. [16]. The engineer for respondent stated that in his judgment the cost of reproduc-

tion new of respondent's structures and equipment as of the date of the valuation and as determined by the witness called by the Government is substantially correct in detail. It is his opinion, however, that this amount is only the cost of the reproduction new of the properties and construction overheads. The witness called by respondent placed a value of $2,491,233.44 upon respondent's structures and equipment new before depreciation. To the cost of reproduction new of structures and equipment the engineer called by the Government added certain percentages to cover a number of indirect construction overheads. To the cost of reproduction new as found by the engineer called by respondent he added a lump sum of $446,438. It has already been found that all the structures and equipment located on land found to be used and useful are used and useful, and that all structures and equipment located on land hereinbefore found to be not used and useful are not used and useful.

*118. In conformity with this general finding, it is found specifically that the following units of property as indicated in the table are used and useful and not used and useful, and that the value of each unit, including construction overheads, is as set forth opposite the various items, and that the total cost of reproduction new of respondent's used and useful property, including direct overheads, is $2,114,699 and that of the non-used and useful structures and equipment, including direct overheads, is $410,451. [17].

BUILDINGS, STRUCTURES AND EQUIPMENT FOUND TO BE USED AND USEFUL AND NON-USED AND NON-USEFUL

	Reproduction New Used & Useful	Reproduction New Non-Used & Non-Useful
Office Buildings		
New Exchange Building	$ 228,259	
Old Exchange Building	96,900	

Petitioner's Note [16]—In the final report the allocation was: $2,118,961 to used and useful structures, and $406,189 to non-used and useful structures.

Petitioner's Note [17]—The final report shows total cost of reproduction new as billing $2,118,961 for used and useful property, and $406,189 for non-used and useful property.

Chute House (Bulletin Office)	32,361	
General Buildings		
Garage and Shop	21,952	
Club House		$ 31,513
Stadium		176,371
Stadium Run-Over Shed		* 917
Stadium Hook-up Shep		* 3,345
Stadium Heating Plant		6,115
Restaurant	1,819	
Stadium Restaurant		6,066
Carpenter Shop	837	
Material Shed	436	
Hide Storage (One Story Tile Building)		14,845
Cattle Division		
Open Pens	489,548	
Feed Lots (Pens 4204-4212-4226)	2,723	
Cattle Dip	5,166	
Branding and Dehorning Chute #1	3,714	
Branding and Dehorning Chute #2	3,637	
Branding and Dehorning Chute #3	4,756	
Viaducts and Subways		
Foot Viaducts	13,229	
Stock Viaduct	19,684	
Subway	7,066	
Hog Division		
Hog Shed #1	10,501	
Hog Shed #2	12,557	
Hog Shed #3	12,528	
Hog Shed #4	17,762	
Hog Shed #5	6,706	
Immunization Plant	6,688	
Sheep Dip and Drain Pens	5,033	
Sheep Pens at Sheep Dip	2,193	
Sheep Division		
Sheep Barn #1	282,254	
Sheep Barn #2	285,465	
Horse and Mule Division		
2 Story Brick Barn #1	37,816	

Petitioner's Note [18]—In final report items marked (*) appear in used and useful column. In final report total used and useful figure was $2,118,961 and for non-used and useful the total figure was $406,189.

Covered Alley Between H & M 1 and H & M 2	509	
2 Story Brick Barn #2	15,809	
Frame Shed #6	4,170	
Frame Shed #7	11,956	
Brick Barn	21,757	
Frame Barn (Show Barn)	10,089	
Brick Barn (Show Barn)	15,163	
Wash House		5,942
Sales Pavilion		12,885
Horse & Mule Barn #3 (3 Story Brick)	89,517	
Blacksmith Shop	5,124	
Retaining Wall	5,285	
Corrals & Outside	5,334	
Feed Facilities		
Hay Barn #6	6,022	
Hay Barn #2	4,328	
Hay Barn #3	13,372	
Hay Barn #4	18,564	
Hay Barn #5	5,980	
Corn Tank	3,189	
Loading and Unloading Facilities		
Burlington Chutes		29,654
Union Pacific Chutes		34,761
C & S Chutes		11,851
River Chutes		17,522
Truck Out Pens	916	
Hog & Sheep Truck-In Dock & Area	3,426	
Office at Hog & Sheep Truck Drive-In	902	
Scale Houses and Scales		
Cattle Scale #1	4,692	
Cattle Scale #2	4,192	
Cattle Scale #4	5,963	
Cattle Scale #5	5,394	
Cattle Scale #6	5,379	
Cattle Scale #10	6,222	
Cattle Scale #11	6,279	
Sheep Scale #7	5,663	
Sheep Scale #8	5,427	
Sheep Scale #12	5,206	
Hog Scales 3-9	6,119	
Hog Scales 13-14	6,492	
Hay Scale	1,180	

Hay Scale	1,600	
Hay Scale	1,180	
Manure Disposal		
Manure Dump (& Area)	8,058	
Manure Dump Office	923	
Manure Dump Shed	1,435	
Railroad		
Railroad Tracks		58,039
Trackmen's Tool House		261
Yard Master's Office		364
General Roadway	13,810	
Sewer System	97,806	
Water System	57,064	
Fire Protection	1,404	
Floating Equipment (Wagons, etc.)	7,221	
Horses, Mules and Harness	2,979	
Total Material and Labor	$2,114,699	$410,451

119. *Condition percent:* The witness called by the Government who appraised respondent's structures and equipment gave it as his opinion that taken as a whole respondent's property was 80.545 percent as good as new. It is the opinion of the engineer who was called by respondent that the structures and equipment and other physical property of respondent lacks 11.1 percent of being as good as new. This percentage deducted from 100 leaves a condition percent of 88.9. In arriving at these respective condition percents the engineers followed somewhat different methods of procedure. The engineer called by the Government was assisted in his work of appraisal by a number of engineers who are employed in the office of the principal valuation engineer at Kansas City, Missouri. There were five assistant engineers engaged in this work, each of whom gave particular attention to certain portions of respondent's structures and equipment. The chief engineer had each of these five engineers inspect each unit of equipment and structure of respondent's property and place upon it an estimate of its present conditions compared with its condition if new. The chief valuation engineer then took the percents condition

as reported to him by his assistant engineers and, giving double weight to the opinion of the engineer who inventoried a particular unit, averaged the percents reported to him. *The chief engineer, using this information as a guide only, then independently determined the condition percent of each unit.* [19] He applied the condition percent of certain groups of structures and equipment against the total cost of reproduction new of each unit, thus ascertaining the cost of reproduction new less depreciation of those groups. The sum of the reproduction cost new less depreciation was related to the sum of the reproduction cost of those units. The resulting percentage represents the weighted average percent condition of all respondent's structures and equipment as testified to by Government engineer.

120. The engineer called by respondent is familiar with respondent's property, having observed it during the process of construction of a number of units at different periods, particularly in 1923, 1925 and 1928 of the cattle yards, and the construction of the new sheep house in 1929. The witness has for many years observed also the concealed construction of the water and sewer systems, particularly when they were opened up for repair or alteration. Both witnesses took into consideration the factors of structural and economic obsolescence, together with the actual physical structural deterioration. The witness called by respondent is of the opinion that the remaining expectancy of life of a property item as compared to a similar expectancy of a new item is a definite factor in establishing the value of the property for sale, but that it is not a factor of material weight in the valuation of a property for rate-making purposes. For this purpose the actual condition of the property is controlling. Observed depreciation is all that should be given consideration, which depreciation would include such obsolescence as might exist. It is the personal conviction of the

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Petitioner's Note [19]—At this point the final report substitutes in place of italicized portion as follows: Then using this information as a guide, he inspected the property, checking the estimates as reported to him and arrived at a condition percent.

witness that the only elements of depreciation properly to be deducted in setting up value of structures and equipment as a part of a rate base is the actual depreciation which affects the capability of the property to render services as compared with new. He states, however, that observed depreciation has been given a somewhat broader interpretation by some authorities whereby it has been claimed that not only the depreciation that could be observed should be recognized but also allowances made for depreciation in certain portions of the property which could not actually be seen or inspected.

121. As regards the condition percent of many of the units of respondent's structures and equipment the two witnesses were in close agreement. With respect to the condition percent of that portion of respondent's equipment which is under the ground, such for instance as its system of water and sewer facilities and the underground portion of posts throughout the stockyard and the inside of concrete pavements, there is considerable difference in the opinion of the witnesses as to the percent condition. *Due to the fact that witness for respondent is more familiar with the underground facilities of respondent than is the witness called by the Government or his assistants, somewhat more weight should be given to his testimony with respect to the condition percent of this invisible property than to the opinion of the witness called by the Government. While the cost of reproduction new of respondent's sewer and water systems does not constitute a major portion of the total cost of reproduction new of respondent's structures and equipment, it does constitute a considerable portion and a placing of a subnormal percent condition on these invisible structures would tend to produce a weighted average condition for the property as a whole lower than the facts warrant. If it be assumed that the engineer for the Government is correct in his opinion as to the condition percent of the major portion of the structures and equipment of respondent, his underestimate of the percent condition of the invisible structures would result in a condition percent some-*

what lower than the facts warrant. The witness called by the Government is less familiar with the effect of climate on respondent's structures and equipment than is the witness who was called by the respondent. The witness called by respondent testified that the physical condition of respondent's stockyards is well nigh the best in the country. It may be that the witness called by the Government ulaced a somewhat lower percent condition on respondent's structures and equipment than climatic conditions would warrant. [20]

122. On the other hand the witness called by respondent stated: "It is my personal conviction that the only elements of depreciation to be properly deducted in setting up value as a part of the rate base is the actual depreciation which affects the capability of the property to render services as compared with new." This view of depreciation gives less weight than is warranted to the actual physical condition of the property. A property in a very poor state of repair and destined to remain in use for only a short time might render service quite similar to that of a new property. Nevertheless, from the standpoint of management it would be unwise to follow a policy which looked upon these two properties as being anything like equal in point of physical deterioration. It is reasonable to conclude that the witness called by respondent placed a percent condition upon respondent's property somewhat higher than conditions warrant.

123. A very considerable portion of respondent's property consists of concrete alleys, pens with concrete flooring, and is constructed of posts, wood gates, troughs, and other facilities which can be replaced piece by piece and thus maintained in a high state of preservation through repairs. *In the case of such a property one would expect to find a comparatively high condition percent. Due consideration of the character of respondent's property and of the fact that the evidence warrants the conclusion that the en-*

Petitioner's Note [20]—Italicized portion omitted from final report.

*gineer called by the Government placed a lower condition percent than was warranted, and that the witness called by respondent gave greater weight than was warranted to the capability of respondent's property of rendering a service comparable to that which it would render if entirely new, leads to the conclusion that the condition percent of respondent's structures and equipment is 83 percent. An examination of the testimony with respect to the condition of the property found to be not used and useful shows that it is somewhat less than the weighted average condition percent of all the property. The condition percent, therefore, of those portions of the structures and equipment hereinbefore found to be used and useful is somewhat higher than the weighted average condition percent of all structures and equipment. It is found, therefore, that the property of respondent found to be used and useful is in 84 percent con*dition. [21]

General Overheads:

124. The engineer for the Government added to the total cost of labor and material 5 percent of reproduction cost new for omissions and contingencies. He then added to this total certain percentages thereof on account of engineers' and architects' fees, legal expenses, general salaries and expenses, and fire insurance. He added also taxes paid by respondent during the year next preceding that in which the hearing was held. To the sum of the total cost of material and labor and the items enumerated above he added 3½ percent to cover interest at 7 percent for a period equal to one-half of that taken by him to be the period of construction. He used the six-months period for the reason that not all of the capital would have to be raised at the beginning of the construction period but could be raised at various

Petitioner's Note [21]—In place of portion italicized final report reads as follows: In the case of such a property, one would expect to find it in a comparatively high state of preservation. On the basis of all the testimony and giving due weight to all of the factors shown by the record to have a bearing upon the condition percent of respondent's property, it is found that the condition percent of the property is 80.545.

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times during the year and that on the whole the interest paid would be on an amount of capital averaging about half of the total cost of reproduction new of material and labor.

125. Taking the total cost new of material and labor of the used and useful structures and equipment as heretofore found and the total cost of reproduction new of the non-used and useful structures and equipment as $2,114,699 and $410,-451, [22] respectively, and considering the omissions and contingencies, general overheads, and interest during construction, a summary of the total ocst of reproduction new of respondent's structures and equipment found to be used and useful and those found not to be used and useful is as follows:

	Used and Useful	Not Used and Useful
Total cost of reproduction new labor and material	$2,114,699	$410,451
Omissions and contingencies 5%	105,735	20,523
	$2,220,434	$430,974
Engineers' and architects' fees' 5%	111,022	21,548
Legal expense 1%	22,204	4,310
General salaries and expenses 2%	44,409	8,619
Fire insurance ½ of 1%	11,102	2,155
Taxes during construction	30,551	5,930
	$2,439,722	$473,536
Interest during construction	85,390	16,574
	$2,525,112	$490,110
Net additions to used and useful property on account of inventory correction in water and sewer systems	2,283	....
Total cost of reproduction new	$2,527,395	$490,110 [23]

Petitioner's Note [22]—Final report puts these items at $2,114,699 and $410,451 respectively.

Petitioner's Note [23]—This table appears in the final report as follows:

	Used and Useful	Not Used and Useful
Total cost of reproduction new labor and material	$2,118,961	$ 406,189
Omissions and contingencies 5%	105,948	20,310
	$2,224,909	$ 426,499
Engineers' and architects' fees 5%	$ 111,245	$ 21,325
Legal Expenses 1%	22,249	4,265
General salaries and expenses 2%	44,498	8,530
Fire Insurance ½ of 1%	11,125	2,132
Taxes during construction	30,613	5,868

	[illegible]	$ [illegible]
Engineers' and architects' fees 5%	$ 111,245	$ 21,325
Legal Expenses 1%	22,249	4,265
General salaries and expenses 2%	44,498	8,530
Fire Insurance ½ of 1%	11,125	2,132
Taxes during construction	30,613	5,868
	$2,444,639	$ 468,619
Interest during construction	85,562	16,402
	$2,530,201	$ 485,021
Net additions to used and useful property on account of inventory correction in water and water systems	2,283	
	$2,532,484	$ 485,021

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126. *The engineer for respondent placed a value of reproduction cost new upon all of respondent's property of* $2,491,233.44. *To this he added on account of indirect construction costs* $446,438, *making a grand total of reproduction cost new of labor and materials and indirect construction costs of* $2,937,671.44. *These figures are not precisely comparable for the reason that the engineer called by the Government reached his conclusion as to value of respondent's structures and equipment by assuming that the materials were in place and that the property is able and willing to function as a stockyard and as a business earning income, that is, as a going concern, whereas the engineer for respondent testified as to an additional sum for going concern value.* [24]

127. On the basis of all the testimony and with due consideration to the factors discussed hereinbefore, it is found that the value of structures and equipment in place on respondent's property as a going concern capable of earning money, and earning money, is $2,527,395 for the structures and equipment hereinbefore found to be used and useful, and $490,110 for the structures and equipment hereinbefore found to be not used and useful. Applying 84 percent, the percent condition hereinbefore found, to these respective values, the total cost of reproduction new less depreciation of respondent's used and useful structures in place as a going concern is $2,123,012, and that the cost of reproduction new less depreciation of respondent's non-used and useful structures is $411,692. [25]

Petitioner's Note [24]—Italicized portion omitted in final report.

Petitioner's Note [25]—Corresponding paragraph is 126 of the final report and reads as follows: On the basis of all the testimony and in consideration of those factors relating to value discussed hereinbefore, it is found that the cost of reproduction new of respondent's used and useful structures and equipment in place in a property which is a going concern capable of earning money, and earning money, is $2,532,484 and that the cost or reproduction new of its non-used and useful structures and equipment $485,021. It is also found that the total cost of reproduction new less depreciation of respondent's used and useful structures and equipment in place is 80.545 percent (the percent condition hereinbefore found) of $2,532,484 or $2,039,789. It is also found that the cost of reproduction new less depreciation of respondent's non-used and useful structures and equipment is 80.545 percent of $485,021 or $390,660.

INTEREST ON LAND DURING CONSTRUCTION

128. The engineer for the Government did not include in the value of respondent's land or in the cost of reproduction-new of respondent's structures and equipment anything on account of interest on the value of the land during the period of construction. The value of the land of respondent hereinbefore found to be used and useful is $571,-134 and the value of the land found not to be used and useful is $201,294. Seven percent of the value of respondent's used and useful land is $39,979.38, and seven percent of the value of respondent's non-used and useful land is $14,090.58. Seven percent is the rate used by the engineer for the Government in computing interest which he included in the value of respondent's structures and equipment. It is found that there should be included in the value of respondent's used and useful property $39,979 to cover interest on land during a construction period of one year. [26]

WORKING CAPITAL

129. An accountant called as a witness by the Government to audit the books and accounts of respondent gave it as his opinion that respondent requires $117,000 as cash working capital in the conduct of its business. From the books and records of the company he ascertained the cash-requiring items and the amounts of money necessary to meet each item as it fell due. He ascertained also the rate of turnover of commodities used by respondent and the frequency of labor payment.

130. Respondent paid out during the 5-year period from 1930 to 1934, inclusive, $784,308.73 for hay, $34,159.93 for bedding, and for grain $80,987.48. The average annual amounts expended for these commodities during the period

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Petitioner's Note [26]—Final report shows:

Value of used and useful land	$536,825.00
Value of non-used and useful land	188,149.00
7% of value of used and useful land	37,577.75
7% of value of non-used and useful land	13,170.43
Amount included for interest	30,267.00

were $156,861.55 for hay, $6,831.99 for bedding, and $16,197.50 for grain. The average turnover of hay was 3.1 times during the year, of bedding 3.8 times, and of grain 9 times. The total annual cost of each of these divided by the rate of turnover shows the amount of cash which is necessary to finance the supplying of these commodities to patrons. The resulting working capital ascertained through this computation is $52,287.18 for hay, $1,708 for bedding, and $1,799.72 for grain. These average amounts of money would not, however, be sufficient to meet the requirements at the peak seasons of the inventories. The accountant included in addition to the average amounts shown above $20,000 as working capital to meet the peak season inventory requirements. Respondent kept on hand during the 5-year period an average inventory of materials and supplies amounting to $10,633.84. The monthly average expenses incident to other cash-requiring items was $14,417.30. The weekly payroll for the period was $3,926.05.

131. Translating these figures into round numbers the accountant summarized the items of working capital, which, in his opinion, are required by respondent in the conduct of its business as follows:

Inventories - Hay	$ 52,000.00
- Bedding	2,000.00
- Grain	2,000.00
- Material & Supplies	11,000.00
Cash not elsewhere provided	14,000.00
Insurance and Deferred	12,000.00
Pay Rolls - Weekly	4,000.00
Cash to meet Peak Inventory	20,000.00
	$117,000.00

132. Respondent did not introduce any testimony as to the amount of working capital required in the conduct of its business. It did, however, introduce in evidence a statement showing its accounts receivable as of December 31, 1934, and the number of days the respective items had been due. The bills receivable outstanding on this date totalled $23,271.40

and the average number of days during which these bills *had been due was 91.5.* This witness testified that the average amount of bills receivable for the year 1934 was in excess of that shown to be outstanding as of December 31, 1934. The average amount outstanding during the year was $38,000. The witness called by the Government included nothing in his working capital on account of these bills receivable because he believes that respondent has nothing to sell other then service, which is dependent upon the furnishing of labor, materials, supplies, and feed.

133. For purposes of computation, the accountant for the Government reduced the actual experience of respondent to a hypothesis in which inventories would be kept constant and perpetual, and the payroll continuous. In order that inventories and payroll may be kept at a hypothetical level, all sales from inventory and sales of the results of labor must be paid for when due. In the instant case not all of these are paid for when due. *As of December 31, 1934, respondent's accounts receivable were $23,271.40. For the year the average of accounts receivable was about $38,000. Under these circumstances either the hypothesis is wrong or the $117,000 for working capital is inadequate. No question is raised in the evidence as to the validity of the hypothesis. The conclusion is, therefore, that the $117,000 for working capital is somewhat too small.* [27]

134. Of the accounts receivable on December 31, 1934, $8,423.43 was overdue on account of rents and manure sales, which are both non-cash-requiring items, and unloading and loading, which is not a service the reasonableness of the rates for which is being determined herein. If the $8,423.43 be subtracted from the $23,271.40 the remainder is $14,847.97, which is approximately 64 percent of the total bills receivable. Assuming that this same percentage prevailed throughout the year 1934, the accounts receivable incident to cash-requiring items would be 64 percent of $38,000, which is approximately $24,300. This added to the $117,000

Petitioner's Note [27]—Italicized portion omitted in final report.

gives $141,300. It is found that $141,300 is the amount of *working capital* which respondent is entitled to have included in the value of its property. [28]

GOING CONCERN-VALUE [29]

135. The information of record upon which dependence must be placed to arrive at going-concern value was given by two engineers and the assistant general manager of respondent. The engineer called by the Government to testify as to the value of respondent's land, structures, and equipment stated that he valued the property of respondent in place and reached his conclusion by considering the fact that the material was in place and that the property is functioning as a successful stockyard, and as a business earning an income. The assistant general manager of respondent testified that respondent had donated to packing companies and railroad companies land which cost respondent originally $254,589.38 in order to induce them to locate near respondent's stockyard. To this cost he added carrying charges up to the date of the hearing, which brought the cost up to $325,547.10. The engineer called by respondent testified that in addition to the cost of reproduction new less depreciation of respondent's property there should be added $330,000 to cover the element of going-concern value. At one time this witness was engaged by the Pullman Company to determine

Petitioner's Note [28]—Corresponding paragraph is 133 of the final report and reads as follows:

Of the approximately $23,271 of bills receivable on December 31, 1934, whose average life was 91 days, slightly less than $8,500 was overdue on account of non-cash-requiring items, rents and manure sales, and the non-stockyard service of loading and unloading. Not all bedding is used in rendering a stockyards service. Not all capital tied up in straw, therefore, is used rendering a stockyards service. Respondent has increased wages 8%, which will tie up somewhat more capital. It is not possible to make an exact mathematical allocation of these amounts as between stockyard services and non-stockyard services or as to the exact amount incident to bills receivable on account of stockyard services. On the basis of the computations as made by the accountant, the testimony of respondent's secretary and treasurer, and all other information of record, it is found that $139,000 is the amount of working capital which respondent is entitled to have included in the value of its property.

Petitioner's Note [29]—In the final report this entire division is materially changed.

the going-concern value of its business. *The amount of going-concern* value which he attributed to this company together with the method used by him in arriving at it was rejected by the Interstate Commerce Commission along with other estimates and other methods submitted by other witnesses. This engineer enumerates a number of elements which tend to create value in excess of investment in the physical properties. Among these he includes the volume of business handled by respondent, an established organization of executives and personnel, a system of records, good credit, and a well-balanced layout of physical facilities. He considers as one of the most outstanding features to be given consideration the expenditure of upwards of $325,000 by respondent to induce packers and railroads to locate near its property. He refers to the fact that in his 1930 appraisal of the property he made some studies as to the reasonable cost of development, that is, the expenditures which theoretically would have to be made in bringing the company to a status of normal operations following the completion of the physical properties, and that, if capital should come to him with the request that he establish a price which it could afford to pay to purchase the assets of the Denver company as an alternative to making a similar investment in purchasing the land and developing a new stockyard, he would recommend a figure greater than $350,000 as going-concern value of respondent.

136. Original cost of land which respondent has given away plus carrying charge neither indicates the presence of going concern or measures its amount even though present. The sum of the original cost and carrying charges on this land increases from year to year. Given a sufficient life span, respondent's going-concern value would reach infinity, irrespective of efficiency or the lack of it.

137. Another factor relied upon by the witness was the high character of the personnel of respondent. It is to be presumed that the personnel is of a high character, and that respondent pays it adequately out of current income for services rendered. Payroll of officers and manager and oth-

er *employees is an operating expense and* not a capital expenditure. No question has been raised as to the reasonableness of the remuneration of officers or manager in arriving at reasonable expenditure hereinafter determined.

138. There is nothing in the record of sufficient definiteness to make it possible or practicable to determine a definite amount for going-concern value which it would be appropriate to include as a separate item in the value of respondent's plant. This is not, however, to deny the existence of going-concern value. The testimony throughout is indicative of the high character of the services rendered by respondent and its efficiency in the operation of its business. The testimony shows that the various witnesses arrived at their valuations having in mind that the property was a part of a going concern and that their values were arrived at with this element in mind. In adopting the cost of reproduction new less depreciation of the structures and the value of the land as found consideration has been given to the element of going-concern value and the values so found include the value of the property as a going concern. To include an additional specific amount in the rate base would be a duplication and no separate allowance is, therefore, made on account of going-concern value.

139. A summary of the value of respondent's used and useful land, the cost of reproduction new of its structures and equipment, including direct construction overheads, indirect overheads, interest on used and useful land during construction, and working capital, and the cost of these, less depreciation where depreciation exists, for respondent as a going concern is as follows:

	Cost of Reproduction New	Condition Percent	Cost of Reproduction New Less Depreciation
Land - Used and Useful	$ 571,134	100	$ 571,134
Total Material, Labor, Direct Construction Overhead and Indi-			

rect Construction Overhead	2,527,595	84	2,125,012
Interest on Used and Useful Land during Construction	39,979	100	39,979
Working Capital	141,300	100	141,300
Total			$2,875,425

140. It is found that the fair value of the property of respondent as a going concern is $2,875,425, and that the rate base on which respondent is entitled to earn a fair return is $2,900,000.

F. Reasonable Rate of Return

141. Two witnesses testified as to what rate of return in their opinions a schedule of rates for respondent should produce in order to be reasonable. Both of these witnesses gave opinions with respect to this matter in a former hearing. One of them is a local investment banker with wide experience. He is a member of the board of directors of the General Stockyards Corporation, and of the Denver Union Stockyard Company. No question was raised as to his qualifications at the time of the hearing and none is raised here. At the time he testified he had carefully read the testimony of the other witness who testified on rate of return and had examined certain investment information submitted by that witness. He stated it as his belief that the theory of limiting electric light and power or other similar public-utility concerns to a fixed rate of return is in large part due to the fact that such utilities exercise a governmental function, and that frequently this is under a franchise which has a truly monopolistic grant and generally is accompanied by a truly soverign grant of eminent domain. Where the Government elects to delegate to individuals the right and power to perform its duties (the performance of which if done by the Government would theoretically be on a non-profit basis, or if profit were made it would be used to reduce taxes) the Government unquestionably has the right to say how much compensation those individuals shall have, namely, how much

they shall be permitted to earn. In stockyard companies, he thinks, the situation is different; they do not exercise a Governmental function, do not have the right of eminent domain, and they are not monopolies.

142. The witness pointed out the competitive character of respondent's business and discussed at length the hazards to which it is subject. He stated that it is always easier to raise capital for an enterprise which bids fair to grow rapidly in size and importance and that investors prefer to place their money in common stocks of going businesses which are enjoying rapid growth in sales and earnings. In the opinion of the witness, purchasers of common stock almost universally buy stock, not only on the strength of the current showing of earnings, but no prospect of earnings as well, whereas investors in bonds and preferred stock are more interested in stability of earnings and a sufficient margin above interest and dividends so that a fixed rate of return will be paid regularly. The witness stated that the common-stock purchaser, however, has a different view, and that if one studies the earnings records of stockyards it is apparent that this is not a line of business where very rapid growth can be expected. The holder of common stocks of stockyard companies can rarely expect a stock dividend or any great increase in cash dividends. Therefore it is necessary for the common stock of stockyard companies to pay a much higher yield if the investor's dollar is to be obtained. The witness stated it as his opinion that the best measure of what the public will demand as a rate of return on stockyard property, is the composite rate of return at which the securities of stockyards have been selling in the past. As indicative of what this composite rate of return on stockyard property is he submitted information showing the composite return arrived at by averaging the interest paid on the bonds, the dividends paid on the preferred stock, and the earnings per share on the common stock. This composite average yield for the years 1930 to 1934, inclusive, was 8.39 percent. The year 1934 was a grossly abnormal year because of the Government's cattle-buying program. If this year be eliminated,

the composite average for the remaining years of the period is 7.75 percent.

143. Witness called by respondent submitted other information in which was shown, as of December 31, 1934, the same data for the stockyards operating at Wichita, Omaha, St. Louis, St. Paul, Fort Worth, St. Joseph, Kansas City, and Sioux City, which showed a composite average return for these yards of 9.923 as compared with a yield of 10.965 for Denver. The witness is of the opinion that 1934 was an unusual year and that it would be unsatisfactory to submit only this year. During 1933 the Government's hog-buying program was in operation and the witness is of the opinion that another year should be taken as representative. He took, therefore, figures for 1932 at Omaha, Kansas City, Fort Worth, Wichita, and St. Paul. These show that the composite return for these markets averaged 8.2 percent in 1932.

144. At the time the witness' testimony was given, the bonds of the Denver Union Stock Yard Company were selling to yield less than 5 percent and the preferred stock, which is callable, to yield 6.7 percent. It is the witness' opinion that, if the company had had no securities outstanding at the time he testified, it might have been possible to issue bonds on a 4½ percent basis and preferred stock on a 6½-percent basis. These securities, in his opinion, would sell at these yields only in case a substantial portion of the valuation of the property were represented by common stock.

145. In the opinion of the witness, the earnings per share of this common stock would have to be very attractive, at least 10 percent of its par value or market value in case the stock had no par value. It is the belief of the witness that the Denver Union Stock Yard Company is entitled to and should have a rate of return of 8 percent on the valuation of the property.

146. The witness is of the opinion also that, if the Secretary should permit respondent an 8 percent return, and if that 8 percent return when applied to the value of respond-

ent's property as found by the Secretary should result in an increase in yardage charges, he would feel that respondent was entitled to make those charges as a matter of right, that is, to earn 8 percent on the fair value of the property, but that other considerations might enter into the wisdom of attempting to earn that return at a certain time, as, for instance, during a depression. The witness is of the opinion that the dividend policy of a corporation ought to be as liberal as possible to the stockholders, but not so liberal as to make impossible the building up of a reserve to take care of possible catastrophies or unforseen contingencies. In 1930 the witness was of the opinion that the Denver Union Stock Yard Company was entitled to a rate of return of 10 percent.

147. The witness called by the Government to give his opinion as to what rate of return a schedule of rates should produce in order to be reasonable, is an economist who has given many years to the study of investments and has made a first-hand study of the subject thoroughout the United States. His qualifications were not questioned at the hearing. They are not questioned here. He stated that in his opinion a schedule of rates which would produce over the next few years a return varying from 6½ to 7 percent would be reasonable. He qualified this statement, however, by saying that he did not think that a schedule of rates would be unreasonable if in the then current year, namely 1935, it should produce a rate of return somewhat below this zone of reasonableness. He stated that 1935 would in all likelihood be a year of subnormal receipts and that a schedule of reasonable rates could not be expected to yield a normal return in a year of subnormal volume and by the same token that if there should occur within the next five years a year of abnormally high receipts and the rates should produce a return of above 7 percent he would not for that reason alone judge the rates to be unreasonably high.

148. He testified in 1930 that it was his opinion that a schedule of rates which would have produced a rate of return of from 7½ to 8 percent in the year 1929 would have been

reasonable. In his statement he included a table showing the average monthly yield of long-time Government bonds from January 1926 to June 1935. The average yield in 1930 of these bonds was 3.28 and for the year as a whole varied from 3.17 to 3.43. He introduced into evidence also a statement showing for industrial and public-utility corporations the trends in bond yields, preferred stock yields, and common stock yields. These yields were bracketed in steps of one-fourth of one percent from 4½ percent up to 7, and the number of issues showing the yield below 4½ percent and above 7 percent stated for each of the years from 1927 to 1935 inclusive. The tabulation shows also the weighted average annual yield for these same securities.

149. The average annual yields on public utility and industrial bonds were as follows:

Year	PUBLIC UTILITY Percent	INDUSTRIAL Percent
1927	4.93	4.90
1928	4.81	4.66
1929	4.45	5.09
1930	4.59	5.03
1931	5.05	5.42
1932	5.59	6.05
1933	5.51	5.60
1934	5.31	5.64
1935 *	5.04	5.21

* As of May 10 only.

150. The average yields on preferred stocks for the same years are as follows:

Year	PUBLIC UTILITY Percent	INDUSTRIAL Percent
1927	5.63	5.42
1928	5.29	5.24
1929	5.27	5.46
1930	5.14	5.36
1931	5.44	5.62
1932	7.05	7.72

1933	6.56	5.09
1934	*	**

* Thirteen out of 16 issues sold at 6.75 percent or more.

** Eleven out of 41 issues sold at between 4.76 and 5 percent, and 5 sold above 7 percent.

151. The average yields on common stock for the same years are as follows:

Year	PUBLIC UTILITY Percent	INDUSTRIAL Percent
1927	4.99	4.98
1928	4.39	4.27
1929	3.26	4.09
1930	3.78	4.65
1931	5.20	5.75
1932	8.18	7.36
1933	7.58	4.82
1934	*	**

* Three issues selling at 5.50 or below, and 6 selling at 7 or above.

** Thirty-two out of 52 issues at 5 percent or below, and 6 selling at 7 or above.

152. The witness stated: "The conclusion which I draw from these yields is that within the period since the last hearing the yield on high-grade public-utility and industrial bonds has declined by about one percent. I am of the opinion that the yield obtainable on good preferred stocks at the present time is approximately one percent less than that obtainable at the date of the last hearing." He qualified this statement, however, by saying that an exception ought to be made in the case of public-utility stocks, both preferred and common. He attributed the decline in price, which would raise the yield, to special conditions, and did not believe that the situation with respect to public utility stocks should be taken as typical of the general investment market.

153. With respect to common stocks the witness stated:

"The common-stock situation has been abnormal for many years, and it is difficult to draw any conclusion from facts relative to it which is thoroughly reliable in forming an opinion with respect to a normal yield on common stocks, but I do know this—that for much of the time for the last ten years the purchaser of common stocks has not been able to get as large a yield in current cash dividends as investors in bonds of the identical corporations issuing the stock."

154. After having formed a tentative opinion of his own investigation of the earnings and yields of various types of securities issued by corporations and after having reached a tentative conclusion with respect thereto, the witness checked these opinions by the yields on various types of securities as shown by financial service organizations and by other information issued by them. The purpose of this investigation was to determine the measure of decline in yields during the past few years. He gave it as his opinion also that stockyard properties in general represent a stable type of business, and included in his statement a comparison of the profits of industrial and public-utility corporations generally with earnings of a large number of stockyard companies throughout the United States and the earnings of the Denver Union Stock Yard Company.

155. The rate of return testified to by the investment banker in 1930 as reasonable was 10 percent and in the instant case 8 percent. The zone of reasonableness testified to by the economist called in 1930 by the Government was from 7½ to 8 percent, and in the instant case, from 6½ to 7½ percent. This represents a 2-percent decline in the yield testified to by the investment banker as of the two dates, and a difference of 1 percent in the zones testified to by the economist.

156. The conclusion to be drawn from the testimony is that there is a margin of at least one percent between the yield at the present time and that in 1930. In the litigation growing out of the 1930 hearing the court upheld as reasonable a rate of return of 7½ percent and stated that this was

a minimum. If from this figure there be deducted the minimum difference between the investment yield procurable, then, and that procured now, a return of 6½ percent would be reasonable in the instant case. But rates are made for the future and mathematical computations and the opinions of expert witnesses must be tempered by the exercise of a reasonable judgment. Notwithstanding the low yield now procurable on investments and the opinion of at least one of the witnesses that the yields would continue low for a number of years, consideration must be given to the fact that the period from 1930 to 1934 was an unusual one. For these reasons and on the basis of all the testimony of both witnesses who testified as to what constitutes a reasonable rate of return, it is found that respondent is entitled to charge rates which will yield 6-¾ percent on the rate base hereinbefore found, namely $2,900,000. [30]

G. The Reasonable Net Stockyards Operating Income Expenses.

157. It is found that the reasonable annual net operating income which should be produced by the rates hereinafter prescribed is 6-¾ percent of $2,900,000, or $195,750. [31]

H. Expenses As Incurred and Reasonable Operating Expenses.

General Statement:

158. In addition to producing a fair return upon the fair value of respondent's used and useful property, a reasonable schedule of rates and charges should produce enough revenues to pay all reasonable stockyard operating ex-

Petitioner's Note [30]—In the final report there was substituted for these last two sentences the following: The low yield procurable on investments, and the opinion of at least one of the witnesses that the yields would continue low for a number of years, lead to the conclusion that the respondent is entitled to charge rates which will yield an average rate of return of 6½ percent on $2,792,700 hereinbefore found to be the base rate.

Petitioner's Note [31]—Final report shows 6½ percent of $2,792,700 or $181,525.50.

penses, including adequate provision for depreciation and taxes. The audit hereinbefore referred to, and made by an accountant employed by the Government, sets forth in minute detail all the expenses incurred by respondent on all accounts during the 5-year period from 1930 to 1934, inclusive. This audit contains also the balance sheets as of the beginning and end of each accounting period and reconciliations of surplus. No question was raised at the hearing as to the accuracy of this audit in reflecting the facts as shown by the books and accounts of respondent. In arriving at the amount of expenses incurred in rendering the services for which are charged the rates the reasonableness of which is determined in this order, an analysis has been made of the expenses as actually incurred in order to determine whether they were incurred in the rendition of a stockyard service and, if so incurred, whether reasonable. The table which follows lists all expenses as incurred and the purpose for which they were incurred. It shows also those which have been eliminated from consideration altogether, those which were modified, and those which were taken into consideration in determining reasonable expenses to be covered into rates.

159. Some of the eliminations of expenses were made because the amounts shown to have been expended were on account of the rendering of services for which are charged rates the reasonableness of which is not being determined herein, and others were made in order that there might be substituted therefore amounts determined to be reasonable on the basis of all the testimony. Respondent incurs certain expenses which do not vary greatly from year to year, irrespective of the volume of business received and handled. In the case of those expenses which show a marked degree of uniformity from year to year, the amount considered to be reasonable is a round figure equal substantially to the 5-year average or the average for a lesser number of years when no expenses on account of the item were incurred in some years. In the case of the expenses on account of those items as to which there is variation, a tendency upward or a tendency downward, all the surrounding circumstances relating to the

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expenditure have been examined and an effort has been made to determine whether the tendency either upward or downward is likely to be permanent. In the case of all items, an examination has been made of all the testimony and of all the information of record to the end that the expenses covered into rates might be just, reasonable, and fair. The following table sets forth the total expenses incurred by respondent, those which have been eliminated altogether for any of the reasons stated above, those which have been discarded altogether and an amount restored, and the average.

Gov't.		1934			1933			1932			1931			1930		5-Year Average of
Ex. 38 Sched. NO.	Total Expenses (Audit)	Excluded	Considered	Total Expenses (Audit)	Excluded	Considered	Total Expenses (Audit)	Excluded	Considered	Total Expenses (Audit)	Excluded	Considered	Total Expenses (Audit)	Excluded	Considered	Expenses Considered
34 Cost of Sales—Hay	$174,614.51	$174,114.20	$ 500.31	$105,264.66	$105,205.87	$ 58.79	$120,789.57	$120,607.75	$ 181.82	$173,671.38	$173,607.92	$ 63.46	$200,653.18	$200,369.48	$ 283.70	$ 217.62
35 " " " —Grain	13,254.27	13,254.27	....	9,009.58	9,009.58	....	12,310.14	12,310.14	....	18,733.67	18,733.67	....	30,129.24	30,129.24	....	....
36 " " " —Bedding	4,694.02	4,691.06	2.96	5,145.82	5,142.32	3.50	6,259.58	6,259.58	....	8,551.89	8,551.89	....	10,762.72	10,735.31	27.41	6.77
37 Yard Labor	118,348.84	36,788.78	81,560.06	88,680.92	32,033.46	56,647.46	97,217.34	33,754.97	63,462.37	103,015.28	33,298.93	69,716.35	108,711.66	34,674.09	74,037.57	69,084.76
38 Horse and Truck Labor	4,692.24		4,692.24	3,227.80		3,227.80	3,994.16		3,994.16	4,908.41		4,908.41	4,550.80		4,550.80	4,274.68
39 Current Yard Expense	2,959.79		2,959.70	2,682.18		2,602.18	2,603.72		2,603.72	2,540.01		2,540.01	3,110.89		3,110.89	2,779.32
40 Yard Cleaning	16,021.36	1,359.43	14,661.93	10,855.67	811.98	10,043.69	12,332.68	852.75	11,479.93	16,003.26	779.11	15,224.15	17,869.14	791.01	17,078.13	13,697.57
41 Office & Management Salaries	36,409.21		36,409.21	30,889.49		30,889.49	34,481.07		34,481.07	33,856.84		33,856.84	33,129.76		33,129.76	33,753.27
42 Officer's Travel & Entertain. Exp.	1,203.26		1,203.26	1,119.24		1,119.24	882.44		882.44	561.70		561.70	568.03		568.03	866.93
43 Rental of Offices	2,223.50		2,223.50	2,572.20		2,572.20	2,572.20		2,572.20	2,572.20		2,572.20	2,572.20		2,572.20	2,502.46
44 Office Supplies	2,419.00		2,419.00	1,698.56		1,698.56	1,876.07		1,876.07	2,103.48		2,103.48	2,280.26		2,280.26	2,075.47
45 Office Expense	155.33		155.33	176.89		176.89	281.62		281.62	303.71		303.71	297.11		297.11	242.93
46 Bank Service—Handling Cash	710.34	710.34	....	....		....	....		....	....		....	....		....	....
47 Engineering Expense	1,549.77		1,549.77	1,439.10		1,439.10	1,569.33		1,569.33	1,599.83		1,599.83	1,279.84		1,279.84	1,487.57
48 Legal and Collection Expense	625.68		625.68	677.68		677.68	788.40		788.40	1,184.72		1,184.72	604.45		604.45	776.19
49 Storehouse Expense	2,547.05		2,547.05	2,388.54		2,388.54	2,643.04		2,643.04	2,673.48		2,673.48	2,623.87		2,623.87	2,575.20
50 Telephone and Telegraph	1,298.67		1,298.67	1,407.93		1,407.93	1,661.09		1,661.09	1,673.25		1,673.25	1,493.63		1,493.63	1,506.92
51 Postage	370.56		370.56	343.71		343.71	374.65		374.65	369.76		369.76	311.72		311.72	354.08
52 Audit Fees	475.00		475.00	450.00		450.00	450.00		460.00	450.00		450.00	450.00		450.00	455.00
53 Directors' Fees	630.00		530.00	730.00		730.00	465.00		465.00	515.00		515.00	535.00		535.00	555.00
54 Rate Hearing Expense	1,044.39		1,044.39	14,543.02		14,543.02	4,076.55		4,076.55	1.35		1.35	19.65		19.65	3,936.99
55 Rates and Charges	6,069.21		6,069.21	6,100.00		6,100.00	9,809.75		9,809.75	15,773.34		15,773.34	6,182.08		6,182.08	8,786.88
56 Yard Electricity	959.70		959.70	801.09		801.09	818.50		818.50	802.67		802.67	760.99		760.99	828.59
57 Yard Heat Expense	341.88		341.88	242.26		242.26	338.24		338.24	430.06		430.06	362.23		362.23	342.93
58 Yard Water Expense	10,116.24		10,116.24	9,687.22		9,687.22	11,311.86		11,311.86	11,296.18		11,296.18	10,457.92		10,457.92	10,573.88
59 Car Partitions, Etc.	137.66		137.66	76.98		76.98	93.5		93.51	164.36		164.36	209.15		209.15	136.33
60 Estrays and Claims	418.72		418.72	166.36		166.36	270.83		270.83	463.49		463.49	719.41		719.41	407.76
61 Yard Casualty Insurance	2,536.92	709.48	1,827.44	3,538.26	1,156.10	2,382.16	1,265.85	404.98	860.87	2,526.99	709.51	1,817.48	3,755.65	1,028.39	2,727.26	1,923.04
62 Lease of Property	616.86		616.86	616.86		616.86	616.80		616.80	616.81		616.81	462.65		462.65	586.00
63 Horse & Mule Boarding Barn Exp.	3,240.60	3,240.60	....	2,455.41	2,455.41	....	3,156.20	3,156.20	....	3,459.58	3,459.58	....	2,301.94	2,301.94	....	....
64 Company Barn Expense	3,801.94		3,801.94	3,781.23		3,781.23	5,857.37		5,857.37	9,167.80		9,167.80	9,841.05		9,841.05	6,489.88
65 Grain Elevator Expense	32.40		32.40	33.09		33.09	32.86		32.86	33.15		33.15	32.85		32.85	32.87
66 Traffic—Solicitors' Salaries	6,929.83	491.52	6,438.31	5,582.19	387.77	5,194.42	8,030.00	555.87	7,474.13	7,490.45	474.03	7,016.42	6,790.79	454.64	6,336.15	6,491.89
67 " —Casualty Insurance	3.18		3.18	2.04		2.04	2.38		2.38	3.30		3.30	4.10		4.10	3.00
68 " —Miscellaneous	45.15		45.15	74.30		74.30	45.00		45.00	....		....	....		....	32.89
69 " —Soliciting Expense	6,667.39	472.90	6,194.49	4,921.79	341.90	4,579.89	6,650.10	460.35	6,189.75	6,775.02	428.76	6,346.26	6,914.10	462.89	6,451.21	5,952.32
70 Advertising	9,893.96	701.76	9,192.20	7,018.33	487.19	6,526.14	6,922.98	479.24	6,443.74	7,059.42	446.75	6,612.67	6,735.10	450.91	6,284.19	7,011.79
71 Dues, Donations & Subscriptions	3,823.84	3,600.59	223.25	3,148.68	2,900.28	248.40	3,154.51	2,786.11	368.40	2,958.04	2,604.56	353.48	3,342.07	2,944.95	397.12	318.13
72 Exchange Building Expense	19,626.02		19,626.02	14,800.72		14,800.72	17,177.54		17,177.54	19,491.47		19,491.47	17,972.09		17,972.09	17,813.57
73 Cigar Stand Expense	14,293.84	14,293.84	....	14,209.30	14,209.30	....	17,943.44	17,943.44	....	19,653.59	19,653.59	....	21,192.08	21,192.08	....	....
74 Garage Expense	16,473.05	12,361.98	4,111.07	7,820.97	5,583.11	2,237.86	....		....	....		....	....		....	1,269.79
75 H & M Div. and S. S. Property	6,308.24	3,386.96	2,921.28	4,332.49	2,326.16	2,006.33	3,969.81	2,131.43	1,838.38	8,075.03	4,335.56	3,739.47	8,988.09	4,825.80	4,162.29	2,933.55
76 Insurance—Fire, Tornado, Etc.	7,745.33	528.37	7,216.96	6,317.66	559.37	5,758.29	6,999.12	623.33	6,375.79	7,109.00	623.33	6,485.67	7,705.91	606.42	7,099.49	6,587.24
77 Taxes	80,127.02	48,850.94	31,276.08	65,208.72	33,220.49	31,988.23	63,110.92	31,638.14	31,472.78	66,677.88	32,645.06	34,032.82	71,845.70	35,402.29	36,443.41	33,042.66
78 Depreciation Expense	54,823.60	54,823.60	....	54,031.99	54,031.99	....	53,931.31	53,931.31	....	54,247.37	54,247.37	....	53,178.30	53,178.30	....	....
79 Interest on Bonds	66,242.37	66,242.37	....	69,375.00	69,375.00	....	70,125.00	70,125.00	....	70,875.00	70,875.00	....	71,625.00	71,625.00	....	....
80 Interest Paid	....	....	....	....	....	....	19.37	19.37	....	679.61	679.61	....	....	....	....	....
81 Bond Discount and Expense	3,190.56	3,190.56	....	3,252.48	3,252.48	....	3,314.52	3,314.52	....	3,376.47	3,376.47	....	3,438.36	3,439.36	....	....
82 Fiscal Agents, Registrar & Trs. Ex.	1,168.85	1,168.85	....	710.16	710.16	....	572.36	572.36	....	726.51	726.51	....	718.58	718.58	....	....
83 Appraisal Expense	3.40		3.40	....		....	....		....	....		....	....		....	.68
84 Dipping and Spraying Expense	812.47		812.47	986.24		986.24	1,881.31		1,881.31	2,280.22		2,280.22	2,153.31		2,153.31	1,622.71

78	[illegible]	[illegible]	[illegible]		[illegible]	[illegible]		[illegible]	[illegible]		[illegible]	[illegible]		[illegible]	[illegible]		
79	Interest on Bonds	66,242.37	66,242.37		69,375.00	69,375.00		70,125.00	70,125.00		70,875.00	70,875.00		71,625.00	71,625.00		
80	Interest Paid							19.37	19.37		679.61	679.61					
81	Bond Discount and Expense	3,190.56	3,190.56		3,252.48	3,252.48		3,314.52	3,314.52		3,376.47	3,376.47		3,438.36	3,439.36		
82	Fiscal Agents, Registrar & Trs. Ex.	1,168.85	1,168.85		710.16	710.16		572.36	572.36		726.51	726.51		718.58	718.58		
83	Appraisal Expense	3.40		3.40													.68
84	Dipping and Spraying Expense	812.47		812.47	986.24		986.24	1,881.31		1,881.31	2,280.22		2,280.22	2,153.31		2,153.31	1,622.71
85	Blacksmith Shop Expense	3,575.90	3,575.90		2,818.95	2,818.95		4,568.81	4,568.81		4,908.12	4,908.12		5,216.55	5,216.55		
86	(Repairs—Yd Structures, Fences, Pens	12,896.88	12,896.88		4,340.71	4,340.71		5,255.73	5,255.73		9,712.01	9,712.01		6,490.05	6,490.05		
86	(" —Chutes	1,361.58	1,361.58		750.59	750.59		911.09	911.09		1,041.14	1,041.14		696.28	696.28		
87	" —Scales	199.94	199.94		262.63	262.63		262.24	262.24		247.16	247.16		648.66	648.66		
88	" —Equipment & pers. Property	444.42	444.42		656.36	656.36		2,218.43	2,218.43		2,406.21	2,406.21		2,769.45	2,769.45		
89	" —Railroad Tracks	37.50	37.50		73.10	73.10		11.86	11.86		44.68	44.68		10.78	10.78		
90	" —Sewers	3,468.18	3,468.18		758.44	758.44		842.54	842.54		973.44	973.44		1,707.71	1,707.71		
91	" —Water Pumps & Service L.	2,257.41	2,257.41		1,984.46	1,984.46		2,134.21	2,134.21		2,353.10	2,353.10		2,806.77	2,806.77		
92	" —Roadway	325.68	325.68		191.59	191.59		249.98	249.98		114.18	114.18		128.26	128.26		
93	" —Pavements	1,662.06	1,662.08		141.35	141.35		584.00	584.00		346.58	346.58		320.59	320.59		
94	" —Garage	205.62	205.62		58.60	58.60		165.13	165.13		121.04	121.04		15.31	15.31		
95	" —Company Auto Truck	704.59	704.59		426.68	426.68		451.86	451.86		147.65	147.65		241.32	241.32		
96	" —Hay Barns	90.44	90.44		265.64	265.64		57.75	57.75		147.86	147.86		26.92	26.92		
97	" —Grading	91.72	91.72					230.38	230.38		42.68	42.68		51.81	51.81		
98	" —Grain Elevator	3.61	3.61		3.28	3.28		42.07	42.07		155.22	155.22		164.86	164.86		
99	Furniture and Fixtures	127.11	127.11		4.19	4.19		18.08	18.08		16.85	16.85					
100	Branding, Dehorning, Etc.	3,793.76		3,793.76	4,435.81		4,435.81	4,625.42		4,625.42	6,983.33		6,983.33	9,524.20		9,524.20	5,872.50
101	Drayage Expense	24.38	24.38		44.22	44.22		118.15	118.15		114.10	114.10		217.99	217.99		
102	Bad Debts	44.69	15.10	29.59	519.00	44.90	474.10	1,610.40		1,610.40	33.91		33.91	12.20		12.20	432.04
103	Stadium Expense													201.93	201.93		

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Cost of Sales:

160. There have been eliminated the costs of all sales of hay, grain, bedding, and the like supplied to patrons of respondent. This has been done for the reason that an adequate amount of cash working capital has been included in the rate base to enable respondent to maintain its inventory. This allowance is in effect a revolving fund which is constantly being recouped from the sale of supplies purchased with it. The small items of expense incurred in the handling of these supplies and not included in other expenses have been included among the miscellaneous expenditures. In the rates hereinafter prescribed, a reasonable spread has been provided between the cost and the selling price of hay, grain, bedding, and other supplies. This spread has been made sufficiently wide to cover the expenses incurred in connection with handling not otherwise provided for. [31½]

Yard Labor:

161. The audit reveals an expenditure of $118,348.84 in 1934 on account of yard labor. The expenditure for this purpose during this year was considerably higher than for any other year from 1930 to 1934, inclusive. This increase was due to the handling by respondent of Government cattle during the year 1934. The record shows that the additional expenses incident to handling these cattle were slightly over $6,000 on account of labor and overheads. The figure of $118,348.84 on account of yard labor shown in the audit includes also the labor used in connection with the loading and unloading of livestock arriving by rail which is not a

Petitioner's Note [31½]—Corresponding paragraph of final report, being paragraph 159 reads as follows:

159. The rates hereinafter prescribed include a provision for a reasonable spread between gross selling price and gross costs of hay, grain, and bedding. One of the factors taken into consideration in arriving at this spread was the actual gross difference between the revenues received for these items and their costs. This eliminates the necessity of carrying throughout the computations the two gross figures, and reaches the same result through the use of one net figure. Cost of sales has, therefore, been eliminated from the expense account.

stockyard service for which are charged rates, the reasonableness of which is being determined herein. After deducting the extraordinary cost of yard labor in 1934 and the cost of labor employed in the loading and unloading of livestock arriving by rail, the 5-year average expenditure on account of that labor employed in connection with the services for which respondent charges rates the reasonableness of which is being determined herein was $69,084.76. It is found that there should be covered into rates on account of this item $70,000.

Salaries:

162. The expenses incurred on account of officers' salaries and on account of management averaged for the 5-year period $33,573.27. It is found that there should be covered into rates on account of these salaries $34,000.

Interstate Commerce Commission hearings:

163. Respondent incurred small amounts in 1930, 1931, 1932, and 1934 on account of hearings before the Interstate Commerce Commission, and in 1933 approximately $14,500. Respondent is vigilant in the matter of railroad rates and looks to the end that those who ship livestock to its yards by rail may do so at reasonable rates. A reasonable amount for this purpose is a legitimate item to be covered into rates. Giving due consideration to respondent's expenditures in the past and to the testimony as a whole, it is found that there should be covered into rates on account of this item of expense $100 per month, or $1,200 annually. [32]

Packers and Stockyards hearings:

164. The audit shows that the average expenditure on account of the hearings resulting from the enforcement of the Packers and Stockyards Act during the years from 1930 to 1934, inclusive, is $8,786.78. During this period more investigational work has occurred than is likely to be the case when once the reasonableness of the rates charged by

Petitioner's Note [32]—Final report gives $300 per month or $3,600 annually.

respondent has been finally determined. Hearings before the Secretary of Agriculture in connection with the enforcement of the Packers and Stockyards Act are not formal litigation the expense of which the losing litigant customarily bears. Such hearings are in the nature of informal investigations and it seems reasonable to assess some of the expenses incident thereto upon respondent's patrons. It is to be presumed that there will be less expense in the future on account of this item than there has been during the last five years. It is found, therefore, that $100 a month, or $1,200 annually should be covered into rates on account of this item.

Dues, donations, and subscriptions:

165. Respondent has many calls for donations to local charities, local philanthropic organizations, and in support of civic activities. Its total contributions on account of these requests during the past five years have ranged between $3,000 and $4,000 a year. In determining what dues, donations, and subscriptions should be passed on to the public through the rates charged, the guide has been that those contributions which are of peculiar benefit to the respondent's employees and patrons should be covered into the rates and that the remainder of them should not. This criterion was followed in the determination of reasonable rates to be charged by the St. Joseph Stock Yards Company, the reasonableness of which rates was upheld by the Supreme Court of the United States. An analysis of these dues, donations, and subscriptions as set forth in the audit shows that slightly over $300 was contributed to activities which benefit respondent's employees or patrons. It is found that there should be covered into rates on account of these items $325.00.

Garage Expense:

166. Respondent owns and for the years 1933 and 1934 operated a garage at which it repairs its own automobiles and trucks, buys its own gas and oil and furnishes these services to others who may desire them. It is difficult to

analyze the receipts and expenditures in connection with the operation of the garage in such a way as to determine the profit or loss sustained on it. The land on which the garage is located and the structures have been included in the used and useful property, and a return on these does not constitute an expense paid by the general public. The yearly cash income from the garage does not equal the cash outlay, but if respondent did not repair its automobiles and trucks in its own garage it would incur expenses elsewhere in doing so. It seems fair, therefore, to cover something into rates. Leaving out of consideration the cost of material and its selling price, the other expenses amounted in the year 1935 to $2,237.86 and in 1934 to $4,111.07, or an average for the two years of $3,174.46. It is found that there should be covered into rates on account of this item $3,175.00.

Horse and Mule Division expenses and livestock show expenses:

167: The horse and mule division has heretofore been found to be used and useful and the stock show property not. Many of the expenses incurred in connection with this property are incurred jointly by these two divisions on account of a small payroll, the use of horses, casualty insurance, heat, light, water, boiler inspection, and repairs and maintenance which constitute the largest single item. Some method of allocation of these expenses has to be employed and, inasmuch as repairs and maintenance occasion the largest single expenditure, the expenses have been allocated on the basis of the value of the structures. On this basis of allocation the 5-year average of expenses allocable to the horse and mule division is $2,933.50. It is found that there should be covered into rates on account of expenses in connection with the horse and mule division $3,000.00.

Taxes other than Federal:

168. Taxes other than Federal paid by respondent have been declining annually from 1930 to 1934. The taxes paid by respondent as revealed in the audit are on account of all

of respondent's land and structures, irrespective of whether used and useful. Altogether, slightly over 81 percent of the total value of respondent's property is on account of used and useful land and structures. Eighty-one percent of the average amount of these taxes paid during the 5-year period is $33,042.66. In the three most recent years of the five, taxes computed on this basis would have amounted to less than $32,000 but more than $31,000. It is found that there should be covered into rates on account of taxes other than Federal $32,000. [33]

Miscellaneous Expenses:

169. There are a number of other activities on account of which respondent incurs expenses or sustains a slight operating loss. These have not been discussed in detail but they have been given consideration in arriving at the total of miscellaneous expenses which respondent will be called upon to pay out of revenue received under rates prescribed as reasonable.

170. The total amount of the items hereinbefore found to be coverable into reasonable rates and those not discussed specifically is $250,238. [34]

Repairs:

171. In setting forth the expenses incident to the operation of certain portions of respondent's property, the accountant for the Government included the repairs as incurred by respondent. These repair expenses are not set forth in the table hereinbefore shown as separate items. The expenses on account of repairs therein set forth are applicable only to those items of property against which the figures appear. The 5-year averages on account of repairs of the specific items of used and useful property therein set forth are as follows:

Yard structures, fences and pens	$ 7,739.08
Scales	324.13

Petitioner's Note [33]—Corresponding paragraph, being paragraph 167 of final report, is materially different and allows $41,545 for this item.

Petitioner's Note [34]—Final report allows $262,040 for this item.

Personal property	1,698.97
Sewers	1,550.06
Water pumps	2,307.19
Roadway	201.94
Pavements	610.92
Garage	113.14
Trucks	394.42
Hay barns	117.72
Grading	83.32
Grain elevators	73.81
Furniture and fixtures	33.24
	$15,247.94

It is found that there should be covered into rates on account of repairs not hereinbefore allowed in connection with other expenses $15,300.

Depreciation Reserve:

172. In addition to those miscellaneous expenditures which it is possible for respondent to pay as they are incurred, there is another item of expense which it cannot so pay, namely, depreciation. Deterioration is constantly taking place in respondent's property through rust, rot, decay and obsolescence. In order that respondent may not suffer an invisible wastage of assets, there must be set aside in a reserve a sufficient amount to offset this irreparable physical deterioration and accruing obsolescence. During the five years from 1930 to 1934, inclusive, respondent carried into its depreciation reserve the following amounts, the annual average of which is $54,042.51:

1930	$53,178.30
1931	54,247.37
1932	53,931.31
1933	54,031.99
1934	54,823.60

173. The engineer called by respondent who valued respondent's structures and equipment gave it as his judgment that $73,080 per year would be the amount necessary for respondent to carry into its depreciation reserve. He arrived

at this figure by determining that $58,080 was the depreciation which should be provided for periodic retirements and renewals of items of property with a definite life span, and $15,000 for general obsolescence. He further testified that the accrued depreciation of respondent's property as of December 31, 1934, was 11.1 percent which is to say that respondent's property was 89 percent as good as new on that date.

174. The engineer called by the Government placed the straightline depreciation upon all of respondent's property at $95,020 per year which did not include depreciation on certain items of underground structure heretofore discussed in connection with the water and sewer system. This witness estimated that the condition percent of the property was 80.545 percent, but stated that there is no relation between condition percent and the period of remaining life as set up in his percentage tables. The reason for this is that condition percent is based upon observation of respondent's plant, while the composite life was arrived at by use of life-expectancy tables and the experience which one would expect in the course of normal maintenance.

175. The accountant called by the government gave it as his opinion that, if $36,274 should be set aside each year and interest thereon computed at five percent semi-annually on a sinking-fund basis respondent could make good the annual straight-line depreciation of $95,020 as testified to by the engineer. These amounts have reference to all of respondent's structures and equipment. The engineer called by respondent testified that in his practice he had not found the sinking-fund method of determining depreciation in use. The accountant called by the Government stated that the straight-line method of determining depreciation is commonly used.

176. Substantial justice in arriving at a proper amount to be covered into rates on account of depreciation of respondent's property is not dependent upon a particular method of mathematical computation but upon the observa-

tion of the condition of respondent's property, how this condition is maintained, what its policy has been with respect to repairs and retirements, and what its depreciation accounts show. Some of respondent's property is comparatively new. Other items have been in existence for considerable periods of time. The character of respondent's property is such that much of it, such as its pens and their appurtenances, can be maintained almost indefinitely through adequate repairs. Its buildings, such as the Old Exchange Building and the New Exchange Building, suffer depreciation. All these matters are factors which it is necessary to consider. Expenditures on account of repairs have already been set forth.

177. The books and records of respondent do not show in detail the history of respondent's depreciation reserve account prior to January 1, 1917, but on that date the amount stood at $133,143.11. On December 31, 1934, it stood at $982,654.27, against which there had been charged on account of depreciation in property which had been retired $64,640.21. Of this amount, $4,805.39 represented depreciation on property retired prior to January 1, 1917. These amounts do not represent all the depreciation in these items of property, but only that which had taken place up to the date of their retirement. From 1923 to 1934 inclusive, or during the 12-year period prior to this inquiry, the surplus account of respondent had been increased by $2,994.50 on account of property retired and had been decreased by $14,377.12. This in effect represents additional depreciation over that shown in the depreciation account. The annual average depreciation taken out of the surplus was $948.50.

178. The actual depreciation observed by the witness called by the Government was $589,622. The condition percent observed by this witness was 80.5 percent, the lowest observed by any witness who testified with respect to respondent's property. In 1930 the same engineer called by respondent in this proceeding testified that the condition percent of the property at that time was 95 percent. The engineer called at that time by the Government placed the

condition percent of the property at 85 percent. The testimony of these witnesses and all the other testimony of record lead irresistibly to the conclusion that respondent's property has been maintained currently in a high state of physical preservation and in a condition to render an exceptionally high type of service. The observed depreciation by that witness whose condition percent was the least of all the percents testified to was $589,622, while the net balance in respondent's depreciation reserve on December 31, 1934, was $918,018.06. The conclusion to be drawn from all the testimony is that respondent throughout a long period of years has been carrying into its reserve account an annual amount more than sufficient to make good the physical deterioration and obsolescence in its property not restorable through repairs. As already set forth, the average annual amount carried into the depreciation reserve on account of all respondent's depreciable structures and equipment was slightly over $54,000. The accountant for the Government gave it as his opinion that an amount of $40,000 a year would be sufficient for the company to set aside annually as a depreciation reserve to provide for retirements and replacements in both used and useful and non-used and useful property. On the basis of a segregation of respondent's property into used and useful and non-used and useful as testified to by a witness who made a careful study of the uses to which respondent's property is put, the accountant gave it as his opinion that $33,200 should be carried annually into the depreciation reserve on account of used and useful property. The property heretofore found to be used and useful, while corresponding in a large measure with that so defined by the witness referred to above, does not do so entirely. Giving due weight to the mathematical computations shown in the record, but considerably more to the experience and the policy of respondent, it is found that $35,000 annually on account of depreciation should be covered into rates, the reasonableness of which is being determined herein.

Federal Income Tax:

179. In the table of expenses shown immediately following paragraph 159, all Federal income taxes paid by respondent were eliminated for the reason that an amount adequate for this purpose should be restored computed upon the income to be received from the rates hereinafter prescribed. The Revenue Act of 1936, of which judicial notice is here taken, provides that the first $40,000 of corporate taxable income shall be taxed at $4,840 and the remainder at 15 per cent. This Act also levies a tax on undistributed income.

180. The gross revenue produced by an application of the rates hereinafter prescribed to the number of head of livestock and the amount of feed hereinafter found to be a reasonable rate factor amounts to $531,993. From this amount of gross revenue certain items are deductible in arriving at the net taxable corporate income. These are operating expenses, including repairs; a reasonable amount on account of depreciation; bond interest paid; and bond interest received on certain types of Government obligations. The bond interest paid by respondent during the year 1934 was $66,242.37. The value of these portions of respondent's land, structures, and equipment heretofore found to be used and useful is 82.43 per cent of the total value of all of respondent's land, structures, and equipment. This percentage applied to the $66,242.37 bond interest paid by respondent is $54,604. This amount has been taken as the bond interest allocable to respondent's used and useful land and property. This same percentage applied against $2,171.68 interest received from investment in Government bonds is $1,790. The sum of these two deductions is $56,394. Total deductions are $356,932. The income tax payable by respondent is $25,099. It is found therefore that $25,099 should be covered into rates on account of Federal income tax. [35 and 36]

Petitioner's Note [35]—In final report, after computation from different figures $21,130 was covered into rates on account of Federal income tax.

Petitioner's Note [36]—Final report allows $13,075 to be covered into rates on account of payroll increases.

Federal Surtax on Undistributed Profits:

181. Should respondent receive gross revenues equal approximately to those indicated from the application of the rates prescribed to the volume of business used as a rate factor and pursue the same dividend policy in the next few years as it pursued in 1934, it would not be subject to the Federal surtax on undistributed profits. It is found that nothing should be covered into rates on account of this tax. [36]

I. REASONABLE EXPENSES

182. A summary of the amounts heretofore found to be reasonable expenses to be covered into rates to be charged by respondent is as follows:

Reasonable rate of return	$195,750
Miscellaneous expenses other than repairs	250,238
Repairs	15,300
Federal income tax	25,099
Depreciation reserve	35,000
	$521,387 [37]

J. VOLUME OF BUSINESS REASONABLY TO BE EXPECTED

183. Respondent is entitled to charge rates which will produce revenues adequate to meet all of the costs, expenses, return, and reserve requirements set forth in paragraph 183. In arriving at a schedule of rates which will produce this amount of revenue consideration must be given to the num-

Petitioner's Note [36]—Final report allows $13,075 to be covered into rates on account of payroll increases.

Petitioner's Note [37]—Corresponding table in final report as follows:

Reasonable rate of return	$181,526
Miscellaneous expenses other than repairs and depreciation reserve	262,040
Repairs	15,300
Depreciation reserve	35,000
Federal income tax	21,130
Increase in pay roll	13,075
	$528,021

ber of head of livestock yarded and to the amount of feed, grain, and bedding sold, and to the miscellaneous services rendered.

Livestock Received Fresh from the Country, Resold to the Commission Division, Resold Elsewhere, and Reweighed for the Purpose of Sale:

184. The number of head of livestock arriving fresh from the country, resold in the commission division, resold elsewhere, and reweighed for the purpose of sale during the 5-year period from 1930 to 1934 is set forth in the following table:

	1934	1933	1932	1931	1930	5-Year Average
Cattle						
Rail and Resales	403,543	233,474	249,845	319,829	390,496	
Federal Surplus Relief Corp.	146,408	....	....	....	....	
	257,135	233,474	249,845	319,829	390,496	290,156
Truck-ins	111,449	88,150	79,245	62,086	41,285	
Federal Surplus Relief Corp.	4	....	....	....	....	
	111,445	88,160	79,245	62,086	41,285	76,442
Pure Bred Bulls	842	833	1,269	1,639	1,635	1,224
Total Rail and Resales, Truck-ins and Pure Bred Bulls	369,422	322,457	330,359	383,554	433,316	367,822
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	16,526	9,771	9,287	12,561	21,201	13,869
Resold to Others	40,591	56,042	25,445	30,670	54,931	41,636
Sold on Order*	68,710	49,608	44,473	54,742	56,645	54,836
Slaughtered at Denver*	12,492	11,605	10,949	12,417	11,269	11,746
Total Resold and Reweighed	138,319	127,026	90,154	110,390	144,046	121,987
Calves						
Rail and Resales	75,687	25,724	20,342	33,676	51,535	
Federal Surplus Relief Corp.	53,375	....	....	....	....	
	22,312	25,724	20,342	33,676	51,535	30,718
Truck-ins	37,452	27,655	26,460	24,548	21,454	
Federal Surplus Relief Corp.	5	....	....	....	....	
	37,447	27,655	26,460	24,548	21,454	27,513
Total Rail, Resales & Truck-ins	59,759	53,379	46,802	58,224	72,989	58,231
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	581	769	505	375	1,031	652
Resold to Others	2,883	1,707	744	537	1,911	1,556
Sold on Order	Included with cattle					
Slaughtered at Denver	Included with cattle					
Total Resold and Reweighed	3,464	2,476	1,249	912	2,942	2,208
Hogs						
Rail and Resales	190,649	248,053	178,129	227,099	265,717	
Fed. Surplus Relief Corp.	....	21,842	....	....	....	
	190,649	226,211	178,129	227,099	265,717	217,561
Truck-ins	260,579	294,312	308,928	237,624	168,486	
Fed. Surplus Relief Corp.	....	39,510	....	....	....	
	260,579	254,802	308,928	237,624	168,486	246,084
Total Rail, Resales & Truckins	451,228	481,013	487,057	464,723	434,203	463,645
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	....	16	43	....	....	12
Resold to Others	162	57	315	365	210	222
Sold on Order*	7,959	11,136	28,590	18,966	18,975	17,125
Slaughtered at Denver*	26,061	30,050	27,173	27,645	20,831	26,352
Total Resold & Reweighed	34,182	41,259	56,121	46,976	40,016	43,711
Sheep						
Rail and Resales	2,296,212	1,993,748	2,129,302	1,796,185	1,529,587	
Fed. Surplus Relief Corp.	116,627	39,079	....	....	....	
	2,179,585	1,954,669	2,129,302	1,796,185	1,529,587	1,917,866
Truck-ins	80,022	66,930	67,240	54,112	31,342	59,929
Total Rail, Resales and Truck-ins	2,259,607	2,021,599	2,196,542	1,850,297	1,560,929	1,977,795
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	....	1,944	80	604	1,170	760
Resold to Others	77,638	58,311	51,834	123,897	68,841	76,104
Sold on Order*	12,030	19,506	30,089	23,072	16,595	20,259
Slaughtered at Denver*	35	1,168	2,488	3,860	2,174	1,945
Total Resold and Reweighed	89,703	80,931	84,491	151,433	88,780	99,068

See Govt. Ex. 38, p. 72 to 76 and Govt. Ex. 43.

*Petitioner's note [38, 39 & 40]—Final Report omits these items.

185. Another source of income to respondent is the profits made on the hay, grain, bedding, and other types of feed sold. During the years 1934 and 1933 considerable amounts of hay and some grain were sold to the Federal Surplus Relief Corporation. This is not business upon which respondent can depend each year, but is an abnormal volume of sales incident to the handling of Government animals. Respondent also transfers at cost some of its inventory to the company barn and the boarding barn. The amount so transferred is also contained in the totals shown in the audit. Inasmuch as respondent makes no profit on these transfers they should be deducted in arriving at the amount of hay, grain, and bedding on which respondent may be expected to make a profit. The following table shows the amount of all kinds of hay, the amount of corn and other grain, and the amount of bedding which respondent sold, the amount which it sold to the Federal Surplus Relief Corporation, and the amount which it transferred at cost and the amount on which it made a profit during the 5-year period from 1930 to 1934.

	1934		1933		1932		1931		1930	
All Kinds of Hay (Cwt.)		236,169		161,229		167,708		217,652		226,886
Fed. S. R. Corp.	73,155		2,007		....		....		....	
Transfers—										
Co. Barn	1,135		1,416		2,894		4,837		4,325	
Board. Barn	1,557		1,377		1,643		1,748		894	
Other	....	75,847	990	5,790	1,650	6,187	....	6,585	....	5,219
Amount Sold at Profit		160,322		155,439		161,521		211,067		221,667
Corn Regular (Bu.)		17,423		19,541		22,109		26,543		28,151
Fed. S. R. Corp.	....		1,712		....		....		....	
Transfers—										
Co. Barn	(34,450) (lbs. or) bu.—615		(36,000) (lbs. or) bu.—643		(55,700) (lbs. or) bu.—995		(88,300) (lbs. or) bu.—1,577		(78,150) (lbs. or) bu.—1,396	
Board, Barn	(41,950) (lbs. or) bu.—749	1,364	(35,400) (lbs. or) bu.—632	2,987	(41,950) (lbs. or) bu.—749	1,744	(50,300) (lbs. or) bu.—898	2,475	(32,150) (lbs. or) bu.—574	1,970
Amount Sold at Profit		16,059		16,354		20,365		24,068		26,181
Bedding (Bales)		24,012		27,587		33,719		42,075		43,679
Transfers—										
Co. Barn	477		454		726		980		945	
Board. Barn	509		451		565		608		315	
Other	....	986	50	955	50	1,341	70	1,658	35	1,295
Amount Sold at Profit		23,026		26,632		32,578		40,417		42,384

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186. The number of head of livestock handled and the amounts of the different kinds of feed sold by respondent are helpful in determining a schedule of reasonable rates in that they are an indication as to the volume of business to be expected in the future. The record contains much evidence with respect to the trade territory from which respondent draws the bulk of its livestock, the number of head which have moved to various markets, including that at Denver, and the trend of the receipts of respondent from this trade territory. It contains also much testimony with respect to conditions which have prevailed and the opinions of two competent witnesses as to what volume of receipts respondent is likely to receive within the next few years.

187. Respondent's assistant general manager considered the years 1933 and 1934 as abnormal, and stated that in his opinion the livestock industry would not recover from the effects of the drought before the first of January, 1937. He estimated that respondent's net operating income in the year 1935 would be $189,430.71. This was $54,936.96 below that received in 1933. He predicated this net operating income upon revenue-producing receipts in the following numbers:

	Rail	Drive-ins	Total
Cattle	203,530	76,815	280,345
Registered bulls	1,043		1,043
Calves	20,430	21,955	42,385
Hogs	135,958	140,942	276,900
Sheep	1,651,829	56,371	1,708,200
Horses and mules	6,951		6,951

188. It was stipulated at the time of the hearing that the monthly reports of respondent to the Department of Agriculture showing receipts of livestock at the Denver market for the year 1935, and for the calendar months thereafter, should become a part of the record. [41] According to these

Petitioner's Note [41]—Final report covers full years 1935 and 1936.

reports the volume of receipts for the year 1935 and for the first seven months of 1936 was as follows:

	1935	1936 (January to July, Inc.)
Cattle	482,421	219,856
Calves	78,279	32,069
Hogs	362,919	269,320
Sheep	2,903,355	1,339,269 [41]

189. Not all receipts of livestock at respondent's yard pay a yardage charge and some of them do not consume feed while in the yards. During the 5-year period from 1930 to 1934, inclusive, respondent collected yardage on approximately 89 per cent of the cattle arrivals, 82 per cent of the calf arrivals, 76 per cent of the hog arrivals, and 75 per cent of the sheep arrivals. During this same period the arrivals of cattle during seven months of each year amounted to 43 per cent of the total for the year, calves to 45 per cent, hogs to 65 per cent, and sheep to 50 per cent of the total arrivals for the year. The receipts of the various species for the first seven months of 1936 would indicate that during the year respondent would receive: [42]

Cattle	511,291
Calves	71,264
Hogs	414,338
Sheep	2,678,638

190. The application of 89 per cent as to cattle, 82 per cent as to calves, 76 per cent as to hogs, and 75 per cent as to sheep to the total computed receipts for 1935 and the indicated receipts for 1936 results in the following volume of revenue-producing livestock for the two years:

Year	Cattle	Calves	Hogs	Sheep
1935	429,355	64,189	275,818	2,177,516
1936 [42]	455,049	58,436	314,897	2,002,904

Petitioner's Note [41]—Final report covers full years 1935 and 1936.

Petitioner's Note [42]—The final report covers full year 1936, hence actual figures are substituted for these estimates.

191. A comparison of the figures showing the receipts for 1935 with the receipts used by respondent's assistant general manager in computing the net operating income which he predicted for that year shows that he greatly underestimated the receipts for 1935. The indicated receipts for 1936 are greater than those anticipated by respondent's general manager, judged by the general tenor of his testimony. [43]

192. The volume of receipts set forth in the preceding paragraph does not include the trader business handled within respondent's yards. The rates of respondent now in effect assess no yardage charge upon trader livestock except that sold in the commission division. The only contribution other than this which this class of livestock makes toward the support of the yards is the profit to respondent on hay and grain which it sells to dealers. The number of animals resold, reweighed for purposes of sale, resold to dealers, and resold to others, *sold on order, and sold for slaughter at Denver* is set forth in the table following paragraph 184.

193. The livestock purchased and disposed of by traders occupies a considerable portion of respondent's yards. In September each year traders are assigned pens in blocks 2600 to 3500 of respondent's property. These blocks contain approximately 160 pens and the adjacent alleys. During the light season traders operate in the commission section in order to avoid the necessity of driving livestock to the trader division. In these portions of the yards occupied by the traders there are scales used for the most part by them.

194. Respondent claims that it is both impracticable and impossible to assess and collect a yardage charge on trader livestock other than that which is sold for the traders in the commission division. It is impracticable, respondent claims, because it would discourage traders from buying and thus lessen the demand for livestock, and impossible because the traders will not pay the charge.

Petitioner's Note [43]—Paragraph 191 above is omitted from final report.

195. This same witness computes the amount of trader volume which does not appear upon the supply side of the market after the traders purchase it, and of the amount which does so appear. According to his estimate, only 21 per cent of trader livestock would come back into the market and compete with livestock already on the market or that to arrive in the future. The conclusion which the witness draws is that the traders increase the demand for livestock to a greater extent than they increase the supply of it, and thus tend to maintain prices at a higher level than would otherwise prevail.

196. The claim is made that since this is the case the shipping public derives more benefit from the higher prices resulting than it suffers disadvantage because the traders pay no yardage charge and thereby increase the yardage charges which have to be paid by the shippers.

197. Another witness testified that traders increase the competition on the market and for this reason should have whatever is necessary for them to complete their operations without having to pay additional charges.

198. The presence of the traders on the market is doubtless a stabilizing factor for they can buy and hold livestock when the runs are heavy and dispose of it when the runs become lighter, but to say that they raise the general price level higher than it would be but for their presence is speculative. The effect of all the marketing machinery is to bring about prices at all markets which bear such relationship to each other as the various factors warrant. The price at one market affects prices at other markets. Prices will not remain out of line for any great length of time. A trader who buys livestock at Denver and ships it to another market for sale appears on that market as a seller and tends to lower the price. The lowering of the price at that market may have the effect of lowering the price at Denver. It is difficult, if not impossible, to determine what effect the presence of traders at the various markets has upon the average altitude of prices. This is not to say, however, that the trader does not play a

necessary part in price determination. Furthermore, the fact that the trader is a desirable part of the market machinery is not to say that he should not pay his proportionate and reasonable share of the cost of the conduct of the market.

199. The assistant general manager of respondent testified that the gross annual amount of revenue which would result from the application of an approximate half charge to livestock resold and reweighed would amount to only slightly over $10,000 a year. In arriving at this figure he assumed that the charge would apply only to the cattle resold to dealers and resold to others, and left out of consideration livestock sold on order and that sold for slaughter locally. He referred to the fact also that a former attempt to collect a yardage charge from traders resulted in a strike on their part and a cessation of buying which practically paralyzed the demand for cattle. But he states further that when this happened outside fatteners showed up on the market and attempted to purchase at prices materially below those prevailing the previous week. With buyers thus ready to come to the market when traders ceased to buy it is difficult to see how the traders' strike would last long. [44]

200. The traders have set up their places of business within respondent's stockyard and conducted it without charge, except in so far as respondent makes a profit on feed which the traders purchase and from the yardage which respondent collects on livestock resold for traders in the commission division. It may be that respondent has the right to render free services to one class of its patrons if by so doing it does not have to maintain higher charges for services rendered to others. It is, however, unjustly discriminatory as well as unreasonable for respondent to maintain a large section of valuable property and to incur numerous expenses in the rendition of free services to one class of its patrons and then remunerate itself through a charge on another class which is greater than necessary to cover the cost of rendering the service to the latter class.

Petitioner's Note [44]—This paragraph omitted from final report.

201. Respondent claims that its condition is peculiar and that it is in a different state with respect to the traders operating on the Denver market than are those stockyards located on the Missouri River, and the Mississippi River, and that at Chicago. This may well be the case, but the evidence of record does not warrant the rate-maker in relieving the traders of any yardage charge whatsoever.

202. Another witness, an employee of the Bureau of Agricultural Economics, who is thoroughly familiar with the movement of livestock throughout the country, gave extended testimony with respect to the livestock conditions in the states of Colorado, Wyoming, and New Mexico from which originate by far the greater proportion of respondent's cattle. During the 5-year period from 1925 to 1929 respondent received a number of cattle ranging from about 14 percent to about 21 percent of the number on farms in these states on January 1 each year. For the 5-year period from 1930 to 1934 these percentages ranged from 11.1 percent to 18.3 percent. For the first of these 5-year periods the average number of cattle receipts of respondent was approximately 609,000, and for the second 5-year period 541,000. The witness estimates that there will be an increase of cattle in Colorado during the period from 1935 to 1939. He was of the opinion that the marketings at the beginning of this period, that is in 1935 and 1936, would probably be small because of the necessity of restocking, but he was of the opinion that for this period as a whole he did not expect marketings to average smaller than for the five years from 1929 to 1933.

203. Receipt of hogs at the Denver market has increased somewhat steadily for the 15-year period from 1920 to 1934. Most of the hogs received by respondent came from Colorado and Nebraska and practically all the rest of them from Wyoming and Kansas. Hog numbers have been drastically reduced throughout the entire country, and especially in the States that furnish supplies to the Denver market. The witness is of the opinion that this will result in a sharp reduction in hog receipts at Denver for the period for 1935 and

for the greater part of 1936. He is of the opinion that the yearly receipts for the five years from 1936 to 1940 will not average as large as during the five years from 1929 to 1933, when the average receipts from the five States of Colorado, New Mexico, Wyoming, Kansas, and Nebraska were 611,400.

204. The supply of sheep at the Denver stockyards comes from a much wider area than do the supplies of either cattle or hogs. These supplies originate largely in Colorado, Idaho, Wyoming, New Mexico, Utah, Oregon, California, and Texas. During the five years from 1924 to 1928, inclusive, there were on farms in these states on the average 19,572,000 sheep. The average receipts at Denver during this period were 1,965,000. For the five years from 1929 to 1933, inclusive, the average annual number of sheep on farms in these states was 25,023,000, and the average annual marketings at Denver were 2,443,000. In 1934 there were 25,691,000 head of sheep on farms and there were marketed at Denver 3,014,000. The witness is of the opinion that to the extent that probabilities favor a series of good feed years from 1935 to 1939 the number of lambs raised in these eight states can be expected to be as large as or larger from 1935 to 1939 than they were from 1929 to 1934. The witness is of the opinion that business and industrial conditions during the five years from 1935 to 1939 will be better than they were in the preceding five years, that this will result in better prices for lambs and wool, that this will bring better care of flocks, and tend to raise the percentage of the lamb crop. His conclusion is that lamb supplies in the eight states which furnish practically all of the Denver receipts will be smaller in 1935 than in 1934 and below the 5-year average from 1929 to 1933. The witness states that for the five years from 1936 to 1940 there is little reason to believe that the average will be below the 1929 to 1933 average, and it may be above.

205. It is a reasonable conclusion to be drawn from all the testimony that under ordinary conditions the revenue-producing cattle, calves, and sheep which will arrive at respondent's yards during the five years following the hearing

under ordinary circumstances would exceed somewhat the receipts during the 5-year period from 1930 to 1934, and that the number of revenue-producing hogs arriving would be less than the number which arrived during that period.

206. The amount of hay, grain, and feed consumed in the yards fluctuates with the volume of livestock received. It is a reasonable conclusion from all the testimony that the amount of hay sold at a profit during the five years following the hearing will exceed the amount sold during the five years previous, but that the amount of corn sold at a profit will be less. During the 5-year period from 1930 to 1934, inclusive, the hay sold on the fence amounted to approximately 80 per cent of the total hay sales, and that sold fed, to approximately 20 per cent of the total sales. [45]

207. The number of head of each species of livestock and the amount of different kinds of feed hereinafter used as a rate factor in determining a reasonable schedule of rates for respondent have not been arrived at by any purely mathematical computation, but by a consideration of the receipts which have been handled by respondent and all the testimony which has a bearing upon what the receipts of respondent are likely to be within the years immediately following those as to which specific and definite information is contained in the record.

208. On the basis of all the statistical information of record and all the opinion evidence of witnesses it is found that the following number of animals of each species and the following amounts of feed of the various kinds should be used as a rate factor in arriving at reasonable rates to be prescribed for the rendition of services for which are charged by re-

Petitioner's Note [45]—This paragraph omitted from final report and new paragraph 204 substituted.

spondent rates the reasonableness of which is being determined herein. [46]

	Rail and Resale	Truck-ins	Resold and Reweighed for Purposes of Sale
Cattle	325,000	75,000	110,000
Calves	20,000	30,000	3,000
Hogs	160,000	225,000	40,000
Sheep	2,000,000	80,000	85,000
Horses and mules	6,000		
Hay		200,000 cwt.	
Corn		20,000 bu.	
Bedding		25,000 bales	
Miscellaneous grain and feed		150,000 lbs.	

209. In the finding in the preceding paragraph as to the number of animals and the amount of hay, corn, bedding, and miscellaneous feed which are herein used as a rate factor in the determination of the reasonable rates prescribed herein, no prediction is made as to the exact number of head of livestock which respondent will receive in any particular year or as to the number which traders will handle in respondent's stockyard. The finding constitutes the number of head of livestock and the amount of hay, grain, bedding, and miscellaneous feed around which respondent's revenue-producing business will fluctuate during the years immediately following the date of this order. The finding is based upon the statistical information of record, the opinions of witnesses, and a test of these opinions in the light of the receipts of livestock as determined in accordance with the reports of respondent filed monthly by it with the Department of Agriculture.

210. Respondent renders certain special stockyard services the charges for some of which are set forth in its schedule and for some of which the charges are not set forth. The most important of these sources of revenue is rental from the Exchange Building, which has been included in respondent's used and useful property, but for which no rate

Petitioner's Note [46]—This tabulation changed in final report.

is set forth in its tariff. The rental paid by respondent's tenants in said building is a matter of contract. The income from this building and from other miscellaneous services constitutes a portion of its revenues available for paying all of its reasonable operating expenses, taxes, and a fair return upon the fair value of its property. These revenues do not vary greatly from year to year, and the amount of revenues anticipated for the years following the date of this order has been taken to be the average for the five years from 1930 to 1934. During this 5-year period the revenues received from these miscellaneous services were as follows:

	1930	1931	1932	1933
Exchange Bldg. rents	45,234.50	45,636.32	43,606.66	42,044.78
Dining room	1,809.89	2,579.48	2,012.32	1,742.07
Profits from company horse and mule barn	8,705.18	8,927.16	6,331.08	5,293.72
Manure sales	4,306.05	4,880.75	2,784.77	2,281.60
Drive-in delivery service	916.54	....	....	913.05
Branding, dehorning, etc.	16,005.61	10,429.40	4,735.27	6,838.76
Weighing	743.00	712.00	1,029.00	1,124.00
Car partitions*	375.50	360.00	224.00	187.00
Drayage revenue*	2,589.53	2,454.50	3,960.00	4,723.50
Rental stock hog plant	804.00	804.00	804.00	651.00
Auto truck washing	657.00	616.15	255.45	163.25
Yard pen rental	....	1,439.20	873.25	684.75
Dipping and spraying	2,973.71	3,542.23	3,163.46	881.57
Services on through hogs (watering, etc.)*	649.90	2,016.50	2,399.15	4,750.07
Miscellaneous income	1,883.74	1,208.88	2,087.42	1,601.71
Total				

*Omitted from final report, and total changed accordingly.

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K. THE UNREASONABLENESS OF EXISTING RATES

211. The amount of money hereinbefore found to be necessary to pay all of respondent's operating expenses, repairs, Federal income tax, depreciation, and a reasonable return on the fair value of respondent's property found to be used and useful is *$521,383*. A reasonable schedule of rates should produce this amount of gross revenue. The miscellaneous revenues derived from the rental of the Exchange Building and various other miscellaneous services the charges for which are either not set forth in respondent's schedule or have not been increased or reduced in the schedule of rates hereinafter prescribed as reasonable averaged *$80,823* during the 5-year period from 1930 to 1934, inclusive. This *$80,823*, the *$327,170* procurable from yardage, and the *$124,000* procurable from profit on hay, grain, and bedding amount to *$531,998*. The revenues resulting from the application of the yardage charges now being assessed against the number of animals hereinbefore *found to be a rate factor and* the average per-unit profit applied against hay, corn, bedding, and miscellaneous feed during the 5-year period from 1930 to 1934, inclusive, and the miscellaneous revenues are *$612,133 or $90,830* in excess of the *$521,303* necessary to pay all reasonable operating expenses and leave a fair return on the fair value of respondent's used and useful property. Moreover, respondent has not assessed a yardage charge against traders' livestock resold or reweighed for purposes of sale except that resold in the commission division. It is, therefore, found that respondent's tariff schedule *now in effect* contains rates and charges which are unreasonable and discriminatory. [47]

L. REASONABLE RATES

212. On the basis of all the foregoing findings and on the basis of the statistical information contained in the record, the opinion of the various witnesses who testified, and

Petitioner's Note [47]—The italicized figures are changed in final report.

all other information in the record, it is found and concluded that the following constitute and are the maximum reasonable rates and charges for the following services rendered by respondent, namely:

SECTION 1.

YARDAGE CHARGES:

Yardage will be charged as shown below:

(1) On livestock received and sold at these yards, also including livestock resold through commission firms.

(2) On livestock sold or contracted in the country to weigh and/or deliver at these yards.

(3) On livestock consigned direct to packers and slaughterers.

Rail:

Cattle	$ .28	per head
Calves (under one year old)	.18	per head
Hogs	.10	per head
Sheep or Goats	.065	per head
Horses or Mules	.35	per head
Pure Bred Bulls	1.00	per head

Resold and/or Reweighed for purposes of sale:

Cattle	$ .14	per head
Calves (under one year old)	.09	per head
Hogs	.05	per head
Sheep or Goats	.03	per head
Horses or Mules	.35	per head
Pure Bred Bulls	1.00	per head

Trucked in or driven in:

Cattle	$ .32	per head
Calves (under one year old)	.20	per head
Hogs	.12	per head
Sheep or Goats	.08	per head
Pure Bred Bulls	1.00	per head

Subject to exceptions hereinafter stipulated.

EXCEPTIONS:

On livestock consigned to the Denver market and offered for sale, but forwarded unsold to another market, yardage will be waived.

On through shipments, handled for railroads and not sold, yardage will be waived.

Cattle over 400 lbs. or over one year of age will take cattle yardage.

SECTION 2.

FEED, FEEDING, BEDDING, ETC.:

Hay (On fence) Current market price, F. o. b. stockyards, plus .... $ .50 per cwt.

Hay (Fed) Current market price, F. o. b. stockyards, plus .... .60 per cwt.

Misc. feed, *Current* market price, F. o. b. stockyards, plus .... .50 per cwt.

Corn, Current market price, F. o. b. stockyards, plus .... .45 per bu.

Bedding, Current market price, F. o. b. stockyards, plus .... .40 per bale

The charges on hay, corn, and miscellaneous feed and bedding shall be divisible by five and respondents shall amend its charges whenever the margin between the cost and the sale price varies five cents from the margin of profits set forth above. When feed other than that set forth above is desired it will be furnished if obtainable by special arrangement.

When livestock is fed or bedded or watered while in cars, a charge of $1.00 per deck will be made in addition to the regular charge for feed or other material used.

When empty stock or box cars are bedded with hay or straw, a charge of 50c per deck will be made in addition to the charge for hay or straw used.

On through shipments of hogs, ordered fed in car with feed furnished by shipper and already in car, a charge of $1.00 per car will be made.

For livestock watered but not fed $1.00 per car will be charged. [48]

SECTION 3.

BRANDING, MARKING, CASTRATING, TIPPING, DEHORNING, ETC.:

Branding:	
One iron	$ .08 per head
Each additional iron	.02 per head
Dehorning or Tipping:	
Cows and Steers	.15 per head
Bulls or Stags	.50 per head
Castration	.50 per head
Ear Cropping	.05 per head
Wattling	.05 per head

DELIVERING CATTLE TO OR FROM BRANDING CHUTES:

Two cents per head each way additional will be charged for handling cattle to or from pens in the 100 to 2,500 series, inclusive. To and from cattle pens numbered above 2,500 series, no additional charge will be made.

The company is not responsible for loss or damage to livestock incident to any of the above operations.

Petitioner's Note [48]—Italicized portion omitted from final report.

SECTION 4.

DIPPING CHARGES:

Cattle	25c per head—minimum	$25.00
Calves	15c per head—minimum	25.00
Lambs	6c per head—minimum	25.00
Ewes	7c per head—minimum	25.00
Bucks	10c per head—minimum	25.00
Hogs	10c per head—minimum	25.00

The charge for dipping includes use of facilities, material, and labor incident to that service.

The company is not responsible for loss or damage to livestock incident to dipping.

All dipping of livestock is subject to the supervision and regulations of the Bureau of Animal Industry of the United States Department of Agriculture.

SECTION 5.

DISINFECTING CHARGES:

Whenever the Bureau of Animal Industry or other governmental authority deems it necessary to disinfect any portion of this company's yards, occasioned by the movement of infected stock, the following will be collected from owner of such infected stocks:

Pens, Single load	$2.50 each
Pens, Double load	4.00 each
Chutes	2.50 each
Alleys	Same proportions as pens.
Disinfecting stock cars	2.50 per car
Disinfecting stock wagons	.25 per wagon
Disinfecting stock trucks	.50 per truck

SECTION 6.

IMMUNIZATION AND VACCINATION:

Use of Facilities only:

Use of facilities for vaccinating cattle, 2c per head when the work of vaccinating is done in connection with branding, dehorning, or tipping.

1933	1934	Average
42,044.78	40,448.96	43,394.24
1,742.07	1,712.53	1,971.25
5,293.72	8,045.18	7,460.46
2,281.60	2,533.55	3,357.34
913.05	3,492.67	1,774.08
6,838.76	6,488.20	8,899.44
1,124.00	2,491.00	1,219.80
187.00	297.25	288.75
4,723.50	4,831.50	3,705.81
651.00	600.00	732.60
163.25	268.60	392.09
684.75	519.50	879.17
881.57	684.79	2,249.00
4,750.07	4,562.55	2,875.63
1,601.71	1,332.54	1,622.86
		$80,822.52

Where facilities are used exclusively for vaccination of cattle 5c per head will be charged.

Facilities for vaccinating and immunizing swine are leased to private parties but reasonable rates must be charged by them for this work.

The work of temperaturing and vaccinating swine is done under the supervision and regulations of the Bureau of Animal Industry, United States Department of Agriculture.

SECTION 7.

SPECIAL SALES:

Charges in connection with special sales will be made by mutual agreement.

SECTION 8.

BOARDING AND STABLING CHARGES:

Draft horses	$ .75 per day
Saddle horses	.75 per day
If owners call for and deliver saddle horses at company barn	.50 per day
Single feeds	.35 each

Above charges include feeding of grain and hay, watering, bedding, cleaning, saddling and/or harnessing.

Milk cows and saddle or other horses kept in cattle, sheep, and/or hog yards and not in regular movement through market .... $ .25 per day
5.00 per month

SECTION 9.

WEIGHING:

Weights will be furnished as a basis for freight charges on request of the Western Weighing and Inspection Bureau or railroads for a charge of $2.00 per draft.

SECTION 10.

MISCELLANEOUS:

Use of facilities and water for cleaning and washing trucks 50c each.

Special arrangements may be made for water troughs and feed troughs, papering cars, partitions in cars, double decking cars, drayage, tying bulls, etc. [49]

213. The revenues to be derived from the application of the yardage rates and the unit profit on hay, grain, and bedding hereinbefore found to be a reasonable volume factor, and the miscellaneous revenues receivable from other of respondent's stockyard activities are as follows: [50]

		Volume Used As A Rate Factor	Rates	Revenues Procurable	
YARDAGE:					
Cattle,	Rail	325,000	$ .28	$ 91,000	
	Truck-ins	75,000	.32	24,000	
	Resales	110,000	.14	15,400	
	Bulls	850	1.00	850	
Calves,	Rail	20,000	.18	3,600	
	Truck-ins	30,000	.20	6,000	
	Resales	3,000	.09	270	
Hogs,	Rail	160,000	.10	16,000	
	Truck-ins	225,000	.12	27,000	
	Resales	40,000	.05	2,000	
Sheep,	Rail	2,000,000	.06½	130,000	
	Truck-ins	60,000	.08	6,400	
	Resales	85,000	.03	2,550	
Horses and mules		6,000	.35	2,100	
Total yardage					$327,170
FEED, BEDDING, ETC.:					
Hay, cwt. on fence		160,000	.50	80,000	
Hay, cwt. fed		40,000	.60	24,000	
Corn, bu.		20,000	.45	9,000	
Straw, bales		25,000	.40	10,000	
Misc. feed, lbs.		150,000	....	1,000	
Total profit on feed, etc.					124,000
MISCELLANEOUS REVENUE					80,823
Total revenue procurable					$531,993

Petitioner's Note [49]—Omitted from final report.

Petitioner's Note [50]—Items of "resales" are materially changed in the similar tabulation (par. 211) of final report. Item of "Directs" added under Hogs. Total revenue procurable per final report is $530,117.00.

As hereinbefore pointed out, the revenues necessary to meet all reasonable operating expenses including repairs and provision for depreciation and to pay a fair return upon the fair value of respondent's property found to be used and useful are *$521,387*. The revenues produced by the schedule of rates found to be reasonable exceed this amount by *$10,606 which is approximately .35 of one per cent on the rate base heretofore found. This .35 of one per cent added to the 6.75 heretofore found to be the reasonable rate of return results in a rate of return procurable by the rates of 7.1 per cent.* [51]

Petitioner's Note [51]—Last 4 lines omitted from final order and excess reduced to $2,046.00.

ORDER

IT IS, THEREFORE, ORDERED that respondent, the Denver Union Stock Yard Company, on and after thirty days from the date of this order, cease and desist from demanding or collecting for yardage, feed, and bedding the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture to become effective July 5, 1931, and designated and known as the Denver Union Stock Yard Company Tariff No. 3, and all supplements and amendments thereto.

IT IS FURTHER ORDERED that respondent, on and after thirty days from the date of this order, shall not publish, demand, or collect any rate or charge for the furnishing of any stockyard services in excess of the rates and charges hereinbefore found and determined to be just and reasonable for the furnishing of such service.

IT IS FURTHER ORDERED that at least ten days prior to the thirtieth day from the date of this order respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act of 1921 and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the thirtieth day from the date of this order showing all rates and charges for the stockyard services furnished by respondent at the Denver Union Stockyards, Denver, Colorado, and all rules and regulations changing, affecting, or determining such rates or charges and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such service.

IT IS FURTHER ORDERED that a copy of this order be transmitted by registered mail to respondent.

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EXHIBIT B

UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

SECRETARY OF AGRICULTURE, v. THE DENVER UNION STOCK YARD COMPANY, Respondent.	B. A. I. DOCKET 450

EXCEPTIONS OF RESPONDENT TO PROPOSED, TENTATIVE FINDINGS AND TENTATIVE ORDER OF THE EXAMINER, AND BRIEF IN SUPPORT OF SAID EXCEPTIONS.

ROBERT G. BOSWORTH,
Solicitor for Respondent.

PERSHING, NYE, BOSWORTH AND DICK,
Denver, Colorado,
Of Counsel.

Dated, December 2, 1936.

(This document is Exhibit B attached to petition in cause No. 10913 in the District Court of the United States for the District of Colorado, entitled "The Denver Union Stockyard Company vs. United States of America and the Secretary of Agriculture.")

THE W. H. KISTLER STAT'Y CO., DENVER

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UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

SECRETARY OF AGRICULTURE, v. THE DENVER UNION STOCK YARD COMPANY, *Respondent.*	B. A. I. DOCKET 450

The Denver Union Stock Yard Company, the respondent above named, excepts to the proposed report, tentative findings and tentative order of the Examiner in the above entitled cause upon the following grounds and in the following particulars:

I.

Respondent excepts to the language and finding contained in paragraph 20 on page 9 of the proposed report for the reason that the Examiner limits the services for which a charge is made to certain enumerated physical services and excludes or disregards the main reason for a charge, namely, the use of the market. It is a misnomer to call the charge a "yardage charge." It should be recognized as a "marketing charge."

II.

Respondent excepts to the finding proposed by the Examiner on page 133 of the report wherein prospective hay sales for the future are estimated at 200,000 cwt. or ten thousand tons annually. This estimate is contrary to the actual five year average hay sales and is contrary to the manifest trend of hay sales. Respondent further excepts in this connection to the findings contained in para-

graph 206 on page 132 of said report, being the finding upon which said estimate is based, and to the rate factor and prospective income from hay sales contained in paragraph 213 of said report.

III.

Respondent excepts to the finding of the Examiner as contained in the tabulations on pages 120 and 121 of the proposed report (paragraph 184) insofar as the same includes in the computations of livestock "Resold and Reweighed for Purposes of Sale," livestock sold on order and livestock slaughtered at Denver. Even though a charge in some amount were proper in cases of resales and reweighs for purposes of sale, which we deny, the two classifications above referred to have nothing to do with any such charge and are erroneously included. The same error appears in paragraph 199 on page 129 of said report and in the third column of the tabulations contained in paragraph 208 on page 133 of said report, to all of which respondent excepts.

IV.

Respondent excepts to paragraphs 179 and 180 insofar as no allowance is made for Federal capital stock tax payments.

V.

Respondent excepts to the finding of the Examiner in paragraph 181 on page 118 of the proposed report excluding any allowance on account of the tax on undistributed profits levied by the Revenue Act of 1936.

VI.

Respondent excepts, under the manifest theory of Examiner and the findings and conclusions elsewhere based thereon in the proposed report to the inclusion in miscellaneous revenues on page 135 of $3705.81 average "Drayage" revenue and $2875.65 for "Services on through hogs (watering, etc.)." For the same reasons, respondent excepts to the inclusion on page 123, under the amount of bedding sold at a profit, of 6500 bales annual average. This

latter error is also carried over into the estimate of future bedding sales on page 133 of the report and results in an overstatement of estimated future revenues on account of bedding sales to be covered into the rates of $2600.

VII.

Respondent excepts to the finding contained in paragraph 163 on page 108 of the proposed report that the sum of $100.00 a month or $1200 annually is a reasonable sum to be allowed in the future and covered into rates for the purpose of defraying the costs of hearings before the Interstate Commerce Commission.

VIII.

Respondent excepts to the finding contained in paragraph 164 on page 108 of the proposed report that the sum of $100.00 a month or $1200.00 annually should be allowed on account of Packers & Stockyards Administration expense. Respondent insists that the allowance is too low and should be increased.

IX.

Respondent excepts to the findings of the Examiner contained in paragraphs 40, 41, 42, 46, 51, 58, 65, 75, 93, 97, 102, 104, 107 and 115, insofar as the Examiner in said paragraphs finds that certain land with the structures thereon are not used and useful for the reason that the same consist of railroad trackage and land, loading and unloading chutes and pens with the land on which they are situate, a railroad tool house, and yardmaster's office, all of which though owned and used by respondent are found by the Examiner to be transportation facilities as distinguished from stockyard facilities, and hence the value thereof is excluded by the Examiner from respondent's rate base.

X.

Respondent excepts to the findings of the Examiner, summarized and tabulated in paragraph 115 of the proposed report wherein the value of the land of respondent

is found to be $772,428.00 and the value of that portion thereof found used and useful by the Examiner is fixed at $571,134.00. Respondent insists that these findings are contrary to the weight of the evidence, are without support in the evidence, and are arbitrary.

XI.

Respondent excepts to the finding of the Examiner contained in paragraph 211 and underlined in the following quoted portion thereof:

> "Moreover, respondent has not assessed a yardage charge against traders' livestock resold or reweighed for purposes of sale except that resold in the commission division. *It is, therefore, found that respondents tariff schedule now in effect contains rates and charges which are unreasonable and discriminatory.*"

And in this connection respondent excepts to the findings or statements made in paragraphs 192, 196, 198, 199, 200 and 201 wherein the Examiner states his conclusions that the yard trader does not contribute to the support of the market except by way of the profit paid on feed consumed; that the traders pay no yardage charge (implying a difference in treatment from other buyers) and thereby increases the yardage charges paid by shippers; that it is speculative to say the operations of the trader result in higher prices on the market; that trader shipments to other markets tend to lower prices at Denver; that free service in any manner or to any extent is furnished the trader with the result that discrimination exists or that another class of patrons, i. e., the shipper, is charged an increased or excessive cost for the rendition of the service to that class; that the evidence of record does not warrant the rate-maker in relieving the traders of any yardage charge whatsoever and implying that other buyers share the cost of the conduct of the market and implying that any part of the livestock "sold on order" and "sold for slaughter locally" would be subject to a reweigh charge on traders. Respondent submits that these findings, statements and conclusions are not sup-

ported by the evidence, are contrary to fact, contrary to law; result in a discriminatory and confiscatory rate schedule. Respondent further excepts to the inclusion in the rate schedule, paragraph 212 on page 137 of the proposed report, of the schedule of charges under the heading "Resold and/or Reweighed for purposes of sale."

XII.

Respondent excepts to the finding of the Examiner in the proposed report that the property in Zone 9 devoted to the Stock Show is not used and useful in the rendition of services for which are charged rates, the reasonableness of which is being determined in this proceeding and the exclusion of the value of said property from respondent's rate base. Respondent further excepts to the findings that the show is a community enterprise; that the stadium was built by the stock show association out of donations procured and that respondent absorbs the deficits of that association. Respondent further excepts to the proposed report because the Examiner has not excluded the income directly traceable to and derived from the show although he has excluded the value of the land and structures from the rate base; it being axiomatic that when property is excluded, the income derived from or on account of that property must also be excluded in determining the reasonableness or unreasonableness of existing rates and the justness of proposed rates. The findings to which exception is here taken are contained chiefly in paragraphs 68, 70, 71, 113 and are reflected in the estimates of future receipts, in the rate factors used, in the proposed schedule of rates and in the finding that existing rates produce more than a reasonable rate of return, all of which findings should be eliminated by the Examiner.

XIII.

Respondent excepts to the disallowance by the Examiner of the going concern value of respondent's plant and the exclusion of any such value from the rate base. In this

connection, respondent specifically excepts to the following findings contained in paragraph 138 of the proposed report:

> "The testimony shows that the various witnesses arrived at their valuations having in mind that the property was a part of a going concern and that their values were arrived at with this element in mind. In adopting the cost of reproduction new less depreciation of the structures and the value of the land as found consideration has been given to the element of going-concern value and the values so found include the value of the property as a going concern. To include an additional specific amount in the rate base would be a duplication and no separate allowance is, therefore, made on account of going-concern value."

Respondent submits that these findings are contrary to fact and to the evidence of record, and that unless a fair going concern value be allowed in the final findings and order, the same will be confiscatory.

XIV.

Respondent excepts to the finding made in paragraph 165 of the proposed report excluding from the expenses of respondent all dues, donations and subscriptions except $325.00, which amount the Examiner finds reasonable.

XV.

Respondent excepts to the elimination from the expense account on page 106 of the proposed report of the items of "Traffic—Solicitor's Salaries," "Traffic—Soliciting Expense" and "Advertising" in the five-year average amount of $472.86, $433.36 and $513.17, respectively, such exclusion, so far as respondent can ascertain, being wholly unsupported by any evidence.

XVI.

Respondent excepts to the proposed report of the Examiner in that it fails to make allowance for certain necessary expenditures in the future all of which have arisen

or the *necessity therefor* become fixed since the hearing of this cause and all of which are of such nature that the Secretary can take judicial notice thereof if he will.

XVII.

Respondent excepts to the proposed rate schedule contained in paragraph 212 of the proposed report for the reason that it is so low as to be confiscatory and for the further reasons that it provides for the assessment of charges on a class of traffic for which no rate or charge can be properly assessed or imposed, is discriminatory and is based on rate factors which are themselves erroneously determined.

Respondent requests an oral hearing before the Secretary of Agriculture upon the exceptions herein taken.

BRIEF AND ARGUMENT IN SUPPORT OF EXCEPTIONS.

In presenting the argument upon these exceptions, respondent will necessarily discuss many facts not of record. We believe that we are entitled to do so, however, for several reasons. One reason is that the Examiner himself in reaching several of his findings, takes judicial notice of Acts passed subsequent to the hearing. He also treats as part of the record, and very properly, the monthly reports filed by the respondent with the Secretary showing receipts. This is expressly permitted by the stipulation of the parties entered in this cause, and executed by Mr. White and Mr. Miles, as solicitors for the plaintiff on or about February 15, 1936. The real intent and purpose of that stipulation, as expressed to Mr. Miles and the Department was to obviate the necessity for petitions for rehearing or motions to reopen the case, and to prevent the record from becoming stale, resulting possibly in an injunction obtained against the order on that technical ground, as was done in the Atchison, Topeka and Santa Fe case with which the Department is, of course, familiar. It has never been the intent of respondent needlessly to prolong this litigation, and we do not wish to claim that at the time the matter comes up for final hearing before the Secretary that the record is stale in any particular. We were gratified by the statement of Mr. Miles, the government counsel, at the conclusion of the hearing as follows:

> "I just want to make one statement. I have been informed by the field representative of the Department that from the beginning of the field studies, the stockyard officials have extended every courtesy to the Government employees and supplied all possible information. During the trial of this case the learned counsel for the Respondent has extended to the Government employees every courtesy and consideration. In my opinion, no information has been withheld that was pertinent to this inquiry either by the counselor or by any of the respondent's representatives. This attitude has made this one of the most agreeable hearings in our history. In my

> opinion the case has been fully and fairly presented by the Respondent without friction. For this attitude I want to express my heartfelt appreciation."

We desired the Secretary then to have the fullest possible information, and we desire it now.

Furthermore, we believe that the practice recently adopted by the Department and contained in the rules of practice effective September 28, 1936, providing for a proposed report and tentative findings is particularly designed, and properly so, for the presentation of matters which affect the decision of the administrative body, even though those matters may not be strictly matters of record. We believe this procedure is sound, and in the years to come will do away with the necessity for petitions for rehearing and motions to reopen the case.

It is for the reasons above stated that we have not hesitated in these exceptions in certain particulars to bring to the attention of the Examiner matters which have occurred subsequent to the date of the hearing. If the Examiner or the Secretary desires substantiation by direct examination of books of account and records of respondent, that can be easily and speedily obtained, and we pledge ourselves to co-operate fully with the government in this regard.

We do not wish to leave the impression from these opening remarks that all of our exceptions are based on matters occurring subsequent to the closing of the hearing. That is not the fact. It is true only in connection with Exceptions V and XV. In certain other exceptions it has been necessary to discuss facts which, while of record in the broad sense, do not appear as segregated therein. This is particularly true in the case our Exception VI concerned with the failure to exclude certain income of the so-called railroad department. There was no indication at the hearing that the government position went so far as to attempt to exclude the loading and unloading chutes and pens. The situation is similar to that presented in the West Ohio Gas Company case cited infra, where the Public Utilities Com-

mission in that case had given no indication of a different division of territory and an attack on the decision permitted on that ground. Such omissions at the hearing should and must give the opposite party the right to present any and all arguments to the Examiner pertinent thereto, before the proposed order becomes final.

With these explanations, we proceed to a discussion of our exceptions.

EXCEPTION I.

Respondent excepts to the language and finding contained in paragraph 20 on page 9 of the proposed report for the reason that the Examiner limits the services for which a charge is made to certain enumerated physical services and excludes or disregards the main reason for a charge, namely, the use of the market. It is a misnomer to call the charge a "yardage charge." It should be recognized as a "marketing charge."

It is not an academic question which respondent raises in this exception. It is fundamental and without a recognition of it, there is a complete misconception of a stockyard and stockyard activities.

The report in preliminary paragraphs states the fact that it is only when livestock is sold is any "yardage charge" assessed. This is the established practice at the stockyards in Omaha, St. Paul, Kansas City, St. Joseph, Sioux City, Sioux Falls, Fort Worth, Oklahoma City, Wichita, and in fact at all stockyards with the possible exception of Chicago, which deems itself so much "at the end of the road" that it need not be bound by practices of other yards.

To explain this situation more fully, suppose two shipments of cattle arriving on the same day, for the same market session, by the same train, from the same place and from the same or different owners.

The Examiner says in paragraph 20, that for its services (1) in driving the livestock from the unloading chutes to the pens; (2) counting; (3) checking; (4) and keeping a record of each consignment; (5) the furnishing

of water; (6) the weighing; and (7) the use of the physical facilities necessary in performing these services, the Yard Company charges the shipper a "yardage charge."

The Examiner is correct in stating that each shipment which forms part of the receipts at respondent's yard received one or more of the services above itemized. Not all of these physical services are received by each shipment, nor ar all or any of the services received to the same extent by all shipments. The shipment which does not sell or which stops merely for feed, water and rest is not weighed nor does it use pens subsequent to sale, nor is the same responsibility assumed by respondent as to those shipments which is assumed with regard to a shipment which does sell. Likewise a shipment which merely stops for feed, water and rest is or may be handled differently from one the owner of which avails himself of the privilege of trying the market,—a privilege which the producing and marketing sides of the livestock industry have fought for years to obtain and keep and which means thousands of dollars annually to the producer. The Secretary would not wish to lessen the effective scope of this privilege, yet here again, no charge is paid unless the livestock is sold.

The imposition of a charge only when livestock is sold on the market is, we repeat, the established, recognized and proper practice at all yards and has been such ever since livestock marketing at livestock markets commenced. *It is based upon the fact that the charge is made primarily for the use of the market.* The charge made is not a yardage charge. There is no mention in respondent's tariff of a yardage charge. It is a *marketing charge.* The charge is the same per head whether a car of cattle is weighed in one draft or in thirty drafts, and the same whether one pen or ten pens for different classes is or are used prior to weighing. This makes it apparent that the charge is for the use of the market together with the equipment necessary or incident to such use, rather than for the use of equipment and labor alone.

We do not mean to imply that no different use of

facilities is made by the shipment which sells than by that which does not sell, but we do insist that such differences as do exist are part of the machinery of marketing, i. e., are incident to the use of the market. Consider for a moment shipments which merely stop for feed, water and rest—i. e., through shipments and those which sell on the market. A through car of cattle arrives for feed, water and rest. It is unloaded and moved as a unit to one pen large enough to accomodate it. The cattle are fed, watered and rested and from that pen are moved back to the loading chutes in time to be loaded into the outgoing train. Of course they are counted and checked and a record kept of these receipts.

A shipment received for sale is unloaded, delivered to the commission firm consignee and by him sorted and graded. As was demonstrated to the satisfaction of the Interstate Commerce Commission in Docket 25123, we have a very different condition at Denver from that existing at a majority of the other markets in that, being on the edge of the producing territory as distinguished from the feeding and fattening territory, our shipments usually require sorting for grade, sex and condition. The Commission man, therefore, sorts the shipment into as many pens as are needed to show and sell the shipment to the best advantage of the grower. Frequently as many as five pens are used in such case for a single carload of cattle. Respondent has striven successfully in the fifty-two years of its existence to build up a buying demand for all classes of livestock. There are local packer buyers and order buyers for outside packers, who want primarily the fat stuff and in some instances the "two-way" cattle. There are bull buyers, feeder buyers, traders and dealers. These absorb the shipment in normal course. When sold, each lot sold is carefully weighed on specially equipped scales by licensed weighmasters and an accurate count and weight record kept in quadruplicate for the protection of the seller, the purchaser, the Yard Company and the Railroad. One lot may be sold to one order buyer or purchaser but weighed in several drafts. From the scales, the livestock is yarded in as many pens as there

are drafts, hence frequently more pens are used after sale than before. This is the only way the sale of cattle can be conducted, i. e., all incident to the use of the market. The charge, however, we insist is for the *use of the market* with the privileges incidental to that use.

This is not an academic discussion. It has definite bearing upon Respondent's Exception XI. Too many people, and among them we reluctantly class the Examiner, regard a stockyard as an hotel for cattle, calves, sheep and hogs, by reason of the fact that the livestock is lodged in pens with a number on the gate or door, with ice cold drinking water and toilet facilities, and frequently meals are served in the rooms! The correct analogy is to the New York Stock Exchange or any other central market. Livestock is a commodity which, because of differences in weight, age and condition, must be physically present and subject to inspection when sold. If the Examiner can conceive of the New York Stock Exchange with rooms lined with safety deposit boxes where the stock certificates or bonds of every seller must be placed in a separate deposit box before sale and subject to inspection by any prospective purchaser, the analogy would be complete. The only purpose for the securities being there in such case would be for sale, i. e., the use of the market. The same is true of livestock consigned to and using the facilities of a stockyard. It is there for sale, i. e., to use the market, and unless it uses the market and is sold, no charge is made.

We request that paragraph 20 be changed to read:

"20. For the use of the market, including the use of physical facilities incident thereto, respondent charges the owner or shipper of livestock brought to market, the following marketing charges:". We also request the Examiner to make appropriate changes elsewhere in the report wherever the term "yard charge" or "yardage charges" is used.

EXCEPTION II.

Respondent excepts to the finding proposed by the Examiner on page 133 of the report wherein prospective

hay sales for the future are estimated at 200,000 cwt. or ten thousand tons annually. This estimate is contrary to the actual five year average hay sales and is contrary to the manifest trend of hay sales. Respondent further excepts in this connection to the findings contained in paragraph 206 on page 132 of said report, being the finding upon which said estimate is based, and to the rate factor and prospective income from hay sales, contained in paragraph 213 of said report.

On page 123 of the proposed report is set forth the actual experience of respondent as to the amount of hay and grain fed during each year of the five year period 1930 to 1934, inclusive. For the purpose of determining the income to be produced from the proposed rates, the Examiner has eliminated the hay and grain fed to company horses and to government drouth livestock. This is correct. Presumably hay fed to company horses is at cost, and hay fed to drouth cattle is a non-recurring item, we hope, and should not be included in determining the reasonable product of the rates for the future. With these eliminations, we submit that the average actual experience during a reasonable period should be the basis of the estimate of future sales during a like reasonable period, adjusted to give effect to any established trends.

The Examiner's estimate for the future is given on page 133 of the proposed report and is 200,000 cwt. or ten thousand tons annually. He bases this upon the receipts of livestock as shown by the monthly reports of respondent filed with the Secretary and admissible under the stipulation of the parties, executed on or about February 15, 1936. The Examiner either overlooks or has not ascertained the hay sales during the same period and we submit that to take the receipts for the year 1935 and the first seven months of 1936 without determining the hay sales during the same period is unfair, and has led the Examiner into error. There has been a definite downward trend in the amount of hay fed to cattle, calves and sheep.

Our position is that the Secretary must predicate or

forecast the product of his schedule of rates for the future either upon some average of the hay sold during a reasonable period prior to the hearing or if he uses 1935 and 1936 figures on receipts in conjunction with those of prior years for the purpose of determining a trend, he must also take into account the amount of hay sold those receipts during that period, or else the purported trend may be, and in this case is, erroneous.

The hay sold during the five calendar years prior to the hearing is shown on page 123 of the proposed report, and after elimination of sales to drouth cattle of the government and to company horses, the figures are as follows:

1930	221,667 cwt.
1931	211,067 "
1932	161,521 "
1933	155,439 "
1934	160,322 "
Total	910,016 cwt.
5 year average	182,003 cwt.
Tons of 2000 lbs.	9,100 tons.

If the Examiner adopts in this instance a three year period as he did in determining the trend of local taxation, the average for the three years immediately preceding the hearing is 159,094 cwt. or 7,951 tons.

But the Examiner argues that receipts of cattle and sheep have increased in 1935 and 1936 over 1934 and therefore forecasts an upward trend in hay sales.

If we estimate the hay sales during November and December, 1936, upon the basis of past experience, and take the actual sales for the year 1935 and the first ten months of 1936, the figures are:

1935	188,312 cwt. or 9415.6 tons
1936:	
10 months actual	129,800 cwt. or 6490 tons
2 months estimated	30,000 cwt. or 1500 tons

If these figures be added to the five year figures of record, or if the Examiner take a five year period including 1935 and 1936, we find the following averages.

1930	221,667 cwt.	
1931	211,067	
1932	161,521	161,521 cwt.
1933	155,439	155,439
1934	160,322	160,322
1935	188,312	188,312
1936 (Est)	159,800	159,800
Totals	1,258,128 cwt.	825,394 cwt.
7 year average	176,304 cwt.	
5 year average		165,079 cwt.
Tons of 2000 lbs.	8,815	8,254

In every instance, the average thus determined is less than the Examiner's finding of ten thousand tons annual hay sales. There is no fact or set of facts appearing of record or otherwise that justfies a higher estimated return in the future from hay sales than any or all of these averages would indicate.

That this is material, we point to the fact that under the proposed rate schedule, the permissible profit on hay is fifty cents a cwt. or ten dollars a ton of two thousand pounds. By finding a ten thousand ton annual sale of hay, the Examiner has overstated the estimated product of the rates as follows:

1. If five year average 1930-1934, inclusive, be used:

Average	9,100 tons
Difference	900 tons
Overestimate of revenue	$9,000.00

2. If three year average 1932 to 1934, inclusive, be used, as was used by Examiner in determining the trend of local taxation:

Average	7,953 tons
Difference	2,146 tons
Overestimate of revenue	$21,460.00

3. If seven year average 1930-1936, inclusive, be used:

Average	8,815 tons
Difference	1,185 tons
Overestimate of revenue	$11,850.00

4. If five year average 1932-1936, inclusive, be used:

Average	8,254 tons
Difference	1,746 tons
Overestimate of revenue	$17,460.00

It is to be noted that although the receipts of cattle in the year 1935 (see p. 125 of Report) are larger than in any of the preceding five years (see p. 120 of Report), there is a marked decrease in the per capita consumption of hay as shown by the hay sold. This is further emphasized by the experience of 1936.

Taking the figures for total receipts of cattle, calves and sheep (exclusive of government drouth livestock of these species) for the years 1930 to 1936, inclusive, as shown at pages 120, 121 and 125 of the proposed report and dividing the total receipts of these hay eating animals into the total hay sales, (also exclusive of sales to government drouth livestock and company horses) for the same years, the following is apparent:

Year	Total receipts cattle, calves and sheep	Hay sold in cwt.	Pounds per animal
1930	1,867,214	221,667	11.87
1931	2,292,075	211,067	9.2
1932	2,573,713	161,521	6.3
1933	2,397,435	155,439	6.5
1934	2,688,788	160,322	5.96
1935	3,464,055	188,312	5.4
1936	3,261,093*	159,800**	4.9

If we reduce sheep to a cattle basis by adopting the recognized rule that five sheep equal in hay consumption one head of cattle, the average amount of hay consumed per animal during the period 1930 to 1935 and the first ten months of 1936 is as follows:

Year	Cattle and Calf Receipts	Sheep Receipts on Cattle Basis	Pounds of Hay Fed	Average Per Head
1930	592,895	412,377	22,166,000	22.0
1931	503,916	499,777	21,108,000	21.0
1932	434,634	566,764	16,250,000	16.2
1933	418,220	580,463	15,544,000	15.5
1934***	468,162	591,218	16,032,000	15.1
1935	559,945	580,671	18,830,000.	16.5
1936 (10 mo. actual)	417,027	531,827	12,980,000	13.6

* Government estimate see report p. 125.
** Ten months actual, two months estimated.
*** Government drouth livestock and hay fed to them deducted.

By reducing receipts of sheep to the cattle basis as above indicated, all possible criticism that our tabulation on the preceding page does not take care of the fact that one species may increase while the other decreases, is obviated. It is to be noted here also that with the exception of 1935 (which year is hereinafter explained), the trend has been decidedly downward. From 1930 to 1936 the decrease in head consumption on a cattle basis is 38%. The Examiner has estimated an increase for the future, which we submit is erroneous. If 38% decrease be applied to the five year average 1930 to 1934 or to the amount of hay fed in any year during the period 1930 to 1936, inclusive, a result would be obtained less than any of the five year averages given in the above tables.

We do not mean to say that every animal of these species received at the Denver yards was fed hay, but we do insist that the tabulations demonstrate the trend. We respectfully submit that the Examiner in predicating his finding of increased annual hay sales for the future merely upon increased receipts is violating an established axiom of the livestock industry, namely, that feed sales do not follow receipts.

There are several reasons why less hay is fed today at the Denver yards than formerly. Chief among these is the increase in trucked-in livestock. Figures on this are also shown in the tabulations on pages 120 and 121 of the proposed report. We have only added here the percentage figure.

Trucked into the Denver Market

Year	Cattle	%	Calves	%
1930	41,285	9.5	21,454	29.39
1931	62,086	16.2	24,548	42.1
1932	79,245	23.9	26,460	56.9
1933	88,160	27.3	27,655	51.8
1934	111,445	30.16	37,447	62.66

Sheep is a species which still moves chiefly by rail in our western territory, but even in that species the truck-ins have increased during the five year period from 2% to 3.5% —an increase of 75%.

No one conversant with the livestock industry doubts that the increase in trucked-in livestock demonstrated in the above table will continue. This is particularly true at Denver, where the improvement both in trucks and in mountain highways, has brought the mountain and plain ranches within an economic motor distance of the market. Livestock arriving by truck and moving out either by rail or truck is in the yard a much shorter time than was the case with rail shipments, and hence less hay is fed. A trucker leaves the farm in the early morning, arrives in time for the market session, and in the great majority of such instances no hay or grain whatever is fed. Truck-outs leave on no set schedule and hence there is less necessity for feeding livestock before it is moved by the purchaser to his farm destination. The increase in the trucking of livestock has defiinitely decreased the amount of feed sold.

Another factor which has the same effect is the speeding up of rail transportation. This affects all classes of livestock both into and out of Denver by rail. It results in shipments moving out of the market much sooner with less hay consumption due to the shorter stay. Many shipments arriving in the morning are now out of the yard by 2 P.M. It is now usual under established schedules of the D.&R.G.W. RR. for example, for sheep to be shipped from the Alamosa territory to a feeder in Northern Colorado without stopping for water, rest and feed at Denver enroute. This was not formerly possible. Now the railroad maintains a regular twenty hour schedule from Salida or Alamosa to Denver, leaving sixteen hours under the thirty-six hour law to move them the fifty or seventy-five miles on to the Northern Colorado feed lots. These sheep are not unloaded and are not fed at Denver. Take the month of October, 1936, for example. This is a month of heavy feeder sheep movement. Sales of sheep exceeded those of October, 1935, yet there was a decrease in hay fed of five hundred tons. This was studied and was found primarily to be due to the large number of feeder sheep which went through to Northern Colorado feed lots without stopping for feed at Denver.

The third factor in the decrease in hay sales is the effort

which is being made to prevent excessive fills. This is being done both to protect our market and to protect the interests of the shippers. It has been the misguided practice of commission men at all markets to attempt to attract business on the basis of giving a "better fill" than their competitor. These fills are, however, loss to the slaughterer and more and more the packer has been watching the percentage at which the livestock dresses out. In 1935, nearly all the increase in hay sales at Denver went to slaughter sheep and the condition became so serious that lambs bought on the Denver market were dressing out two per cent. less than at Ogden. The packers transferred much of their buying operations to Ogden to the detriment both of respondent and the growers in its normal territory. In short, the market was injured and it was necessary to take a firm stand. The result has been numerous meetings with the commission men on our market and a campaign of education to reduce fills. It has been largely successful and must be continued if our growers are to get a fair break and a fair market. Sales of hay have correspondingly decreased.

It is impossible to state with definiteness the amount of decrease to be expected in hay sales by reason of each or all of these factors, but we submit that there can be no justification for increasing the estimate over the experience average of a reasonable period in the past. We submit that the five year average 1932 to 1936, inclusive, is the fair basis for estimating future hay sales because it more accurately gives effect to the established trend. This results in an overstatement of expected revenues from the proposed rates of $17,460.00. But whatever average is used by the Examiner, there is an overstatement of expected income which must be corrected.

We request the Examiner to modify his finding contained in paragraph 208 of estimated future hay sales of 200,000 cwt. to 165,000 cwt. or eight thousand two hundred fifty tons, and to amend his rate schedule accordingly. We submit that confiscation will result unless this be done. Respondent also requests that the finding made in paragraph 206 on p. 132 of said order that it is a reasonable conclusion

that the amount of hay sold at a profit during the five years following the hearing will exceed the amount sold during the five years previous be stricken for the reasons hereinabove stated.

EXCEPTION III.

Respondent excepts to the finding of the Examiner as contained in the tabulations on pages 120, 121 and 141 of the proposed report (paragraphs 184 and 213) insofar as the same includes in the computations of livestock "Resold and Reweighed for Purposes of Sale," livestock sold on order and livestock slaughtered at Denver. Even though a charge in some amount were proper in cases of resales and reweighs for purposes of sale, which we deny, the two classifications above referred to have nothing to do with any such charge and are erroneously included. The same error appears in paragraph 199 on page 129 of said report and in the third column of the tabulations contained in paragraph 208 on page 133 of said report, to all of which respondent excepts.

By bringing this exception, respondent does not waive its position in Exception XI. This exception III assumes for purposes of argument the government theory concerning reweigh charges and points out errors which must be corrected even if that theory be incorporated in the final report.

The errors noted in this exception are due to a misinterpretation by the Examiner of government exhibit 43 and results in an overstatement of prospective income to be derived from the proposed rates of $9321.48 on cattle, $2173.85 on hogs and $666.15 on sheep, or a total of $12,161.48. These figures are based on the five year average for these two items shown in the last column of the tabulations on pages 120 and 121 of said order. If these figures are modified to conform to the estimates on page 133, the overstatement of income is $10,841.03. Whichever figure is taken, it more than offsets the claimed "cushion" of $10,606.00 (see page 141) and is confiscatory.

The facts and figures shown on government exhibit 43 were prepared for the most part by respondent for govern-

ment counsel but the exhibit was only offered by the government for the purpose of avoiding any implication that the respondent admitted the propriety of a proposed charge to traders.

At the close of the 1930 investigation the Secretary ordered a half yardage charge on all trader sales and among the reasons why this charge was disapproved by the court and the order enjoined was the fact that this portion of the order was based on inaccurate or unsupported evidence. Therefore with full knowledge of the fact that the Secretary would again attempt to impose this charge, the respondent kept accurate account of all trader and dealer transactions for the five year period 1930-1934, inclusive. These figures were adopted by the government and appear in government exhibit 43. They are correct.

The trouble now is that the Examiner has overlooked the fact that the exhibit covers all trader transactions and has assumed that it covers only cases of resales or reweighs for purposes of resale. Hence he has incorporated certain items erroneously in computing the estimated product of of the rates.

The fourth classification in government exhibit 43 is the number of head of livestock bought on order. The five year average of these is 54,836 cattle, 17,125 hogs and 20,259 sheep. These are neither resold by the trader nor reweighed for purposes of resale, yet the Examiner has put these into his tabulation on pages 120 and 121 under the heading "*Sold* on Order." This is absolutely contrary to what the exhibit shows and to what actually happens. These must be eliminated from any estimate of prospective income on account of a charge on resales or reweighs.

The same is true of the number of livestock shown in the heading "Slaughtered at Denver." These must likewise be excluded in computing prospective income from the proposed charge on resales and reweighs. Apparently this error of the Examiner lies in his belief that this livestock is purchased by dealers and then resold to packers for slaughter. This is not the case.

The facts, as shown by the evidence and by exhibit 43 are as follows: We have one cattle dealer at Denver, Joe Pepper, who operates both as a trader and a packer, the latter being the Pepper Packing and Provision Company located at the south end of the yards. This operator purchases daily both as a packer and as a trader, all being weighed in the same way, viz, to Joe Pepper. Part of his purchases are immediately taken to the packing plant and part are resold. It being impossible to tell from the scale tickets whether they were slaughtered or resold, his books were checked for five years to ascertain exactly what happened. This disposition together with that of all other traders is shown under heading VI of government exhibit 43. The Examiner estimates average revenue for the future on 11,746 head annually from this source. Obviously, as these cattle are immediately driven to the packing plant and slaughtered, the same as any other packer purchase at Denver, no additional service is performed and no additional revenue is obtainable. The numbers he resells on the market are included in items I and II.

The same condition is true with reference to the 26,352 hogs and 1,946 sheep slaughtered at Denver on which the Examiner estimates revenue for the future. This is livestock purchased by parties registered as dealers for local or outside packers. It is immediately taken out of circulation and not reoffered for sale, resold or reweighed. It is in the same category with the cattle of the Pepper company mentioned above. No additional service is performed and no additional revenue can be collected for the mere use of alleys in moving off of the property. Again, to collect a charge in this instance would be to collect from both the seller and the purchaser in the same transaction.

The point is that when a packer or a countryman buys on the market any kind of livestock either for local slaughter or for movement to outside destinations, there is no resale or reweigh and the only charge is paid by the seller. No additional charge is or could be made. At Denver, as the record in this case shows abundantly and without contradiction, traders also operate as order buyers and dealers.

When acting in the latter capacity, they are the same as any other buyer and there is no resale. We submit that the Examiner must eliminate the livestock shown under the heading "Sold on Order" and "Slaughtered in Denver" from the tabulations on pages 120 and 121 of the report and must exclude them from any estimate of prospective income under the proposed rates.

We request the Examiner to make the eliminations specified above, to correct his tabulation of prospective receipts accordingly in paragraph 213 and to revise his proposed schedule of rates to cover the resultant decrease in the estimated product of the rates.

EXCEPTION IV.

Respondent excepts to paragraphs 179 and 180 insofar as no allowance is made for Federal capital stock tax payments.

The Examiner in paragraphs 179 and 180 of the proposed report computes an allowance on account of Federal income taxes of $25,099.00 under the Revenue Act of 1936, of which the Examiner takes judicial notice. Basing his computation upon his estimate of the product of the rates less allowable deductions for operating expense, interest on bonds, depreciation, etc., the allowance is exact.

No allowance, however, is made for any portion of the capital stock tax. It is no answer, we respectfully submit, to say that since respondent is permitted by law to declare any value it sees fit upon its capital stock, no allowance should be made therefor in determining whether or not the schedule of rates gives a fair return upon the fair value of the property. The ratepayer must expect to pay a charge sufficiently large to pay all proper expenses and in addition a fair rate of return to the owners.

The amount of capital stock tax to be paid is a matter which the law itself, expressly leaves to the discretion of the management. To interfere with that discretion so long as it is exercised reasonably and in good faith is an unwarranted invasion of the management function. See Den-

ver Union Stock Yard Co. v. United States, 57 Fed. (2nd) 735, and cases there cited.

The government audit (government Ex. 38) shows that in 1933 and 1934, a capital stock tax of $3212.00 annually was paid. If we adopt the Examiner's percentage of 82% used and useful property and take that percentage of the capital stock tax actually paid, the result is $2535,00 which sum is the minimum allowance to be included in the proposed report for this item.

We designate this figure as the minimum allowance because if the Examiner takes into account the capital stock tax paid in the years 1935 and 1936, the four year average will exceed $3212.00. We believe the Examiner is permitted to do this under the spirit of the stipulation of the parties above referred to, but if he chooses to limit himself in this instance closely to the record, the sum of $2534.00 is the allowance to be made.

We request the Examiner to include in his order an allowance of at least $2534.00 on account of the capital stock tax and to revise the rate schedule accordingly. We submit that unless such proper allowance be made, any order issued by the Secretary upon the basis of the proposed report will be confiscatory.

EXCEPTION V.

Respondent excepts to the finding of the Examiner in paragraph 181 on page 118 of the proposed report excluding any allowance on account of the tax on undistributed profits levied by the Revenue Act of 1936.

On page 118 of the proposed report the Examiner finds that nothing should be covered into rates on account of this tax on undistributed profits. The Examiner states as the reason for this finding that if the respondent continues its present dividend policy no tax under this section of the Revenue Act of 1936 will be assessed.

This is not the fact.

The Examiner forecasts the gross product of the rates

and deductions, before Federal income tax to be as follows (paragraphs 179 and 180):

Gross revenue	$531993.
Total deductions, including bond interest and depreciation	356932.
Taxable net income	$175061.
Federal Income tax as found by Examiner	25099.
Balance	$149962.

The respondent has outstanding a certain bond issue in the aggregate principal amount of $1,500,000. under the terms of which the Company must deposit annually in the sinking fund for the retirement of bonds of this issue $30,000.00. This is an absolute obligation, nevertheless both because the mortgage ~~does~~ not specifically pledge the earnings of the fiscal year to the reduction of the indebtedness, and because the mortgage is dated June 1, 1936 the Commissioner of Internal Revenue in the regulation recently published (TD 4674) has ruled, as we are reliably informed, that such sinking fund payment is not a credit allowed by the Act in determining the undistributed net income subject to the tax in question. This being so, we have and will have only the credit on account of dividends paid. If we use the Examiner's percentage figure of 82% used and useful property and apply this to the sinking fund obligation, we have $24,600.00 as that part of the sinking fund requirement for which the tax is fairly chargeable to the rate payer. Hence, the utmost respondent can do, will result in a tax as follows:

Adjusted net income		$149,962.
Less:		
Pfd. stock dividend	$50,875.	
Div. on Common—31200 sh. @ 2.25	70,200.	121,075.
		$ 28,887.
Tax on $28,885 of undistributed profits		2,716.63

Presumptively, if the schedule of rates is correct we will average over the next few years this amount of adjusted net income and this tax. We submit that an allowance there-

for should be made in the order and the tariffs increased accordingly.

We further submit that respondent is entitled to withhold out of profits a reasonable amount for the purpose of expansion of business or expansion of facilities or both.

> *West Ohio Gas Co. v. Public Utilities Commission*, 294 U. S. 63, 55 Sup. Ct. Rep. 316 at 321.

As stated in the above case:

> "A business never stands still. It either grows or decays. Within the limits of reason, advertising or development expenses to foster normal growth are legitimate charges upon income for rate purposes as for others. When a business disintegrates, there is damage to the stockholders, but damage also to the customers in the cost or quality of service."

In the West Ohio case just cited, the rate making authority disallowed $7,000 out of an item of $12,000 of expense for procuring new business. The Supreme Court required the reinstatement in the rate base of the full $12,000 both upon the rgounds stated above and because its denial was an unwarranted interference with the rights of management.

The Examiner has excluded certain advertising expense and certain solicitor's expense, no evidence authorizing such exclusions appearing of record. Exception to this action is taken in Exception XV. The Examiner has also excluded the stock show property, which he admits is at least "good advertisement" for the Denver market and attracts much business. We insist it is much more than mere advertisement, but however that may be, the attitude of the Examiner is clear that it is his intention to exclude all items designated or which may be designated as for the expansion of business. Exception to the exclusion of stock show property is taken in Exception XII. Here we insist that the management has the right to reserve a reasonable amount for the expansion of facilities or business or both and that, therefore, the tax which will now be imposed upon such a reserve must be allowed as an expense in computing whether or not the rates proposed result in a fair return upon respondent's property.

Of course, this does not appear of record. The Act in question was not passed at the time of the hearing, yet the Examiner himself has taken judicial notice of it and is using the Revenue Act of 1936 to test the fairness of the proposed rates. We not only have the right, but it is our duty to call to the attention of the Examiner matters which might render his final order nugatory or bad.

The Examiner finds no need for an allowance for the tax on undistributed profits. We are within our rights to insist that there is ~~and~~ that within such an allowance must be included the amount of such tax upon a reserve for expansion of facilities, although the amount of such needed reserve is not in evidence in this case.

The management feels that a reserve of approximately $15,000.00 annually out of profits to be added to surplus is not an unreasonable amount for the purpose indicated. This, however, with the sinking fund obligation will necessarily result in the withholding out of profits of the current fiscal year $45,000.00.

If this be done, the resultant tax will be as follows, applying same percentage figure of 82% to this reserve:

Adjusted net income		$149,962
Less		
Dividend Credit		
Pfd.	$50,875	
Common		
31,200 sh. @ $2.00	62,400	113,275
Bal. subject to tax		$ 36,687

Tax on $36,687 of undistributed profits is $3,987.35.

We request the Examiner to change the finding contained in paragraph 181 so as to allow the sum of $3,987.35 on account of the tax on undistributed profits; that the finding and tabulation contained in paragraph 182 be likewise changed, for the reasons hereinabove stated; and that the schedule of rates be increased accordingly.

EXCEPTION VI.

Respondent excepts, under the manifest theory of Examiner and the findings and conclusions elsewhere based thereon in the proposed report, to the inclusion in miscellaneous revenues on page 135 of $3705.81 average "Drayage" revenue and $2875.65 for "Services on through hogs (watering, etc.)." For the same reasons, respondent excepts to the inclusion on page 123, under the amount of bedding sold at a profit, of 6500 bales annual average. This latter error is also carried over into the estimate of future bedding sales on page 133 of the report and results in an overstatement of estimated future revenues on account of bedding sales to be covered into the rates of $2600.

In presenting this exception we are not waiving our Exception IX. We do not agree with the Examiner in his exclusion of the railroad trackage, the loading and unloading chutes and pens and the segregation and exclusion of all labor incident thereto on the ground that each of these items is a transportation facility as distinguished from stockyard facilities. We do insist, however, that the Examiner must logically pursue his theory and exclude all income and expense of the "transportation" branch if he excludes any thereof.

Much of what we shall point out here does not appear clearly of record, although the government auditor and certainly government witness Christensen well knew the facts. We had no inkling that the chutes and the loading and unloading facilities would be excluded and we suspect that neither the government auditor nor Mr. Christensen held any such view. Hence, the figures, although appearing in the totals, are not segregated of record. They are susceptible of easy segregation and proof.

The account "Drayage Revenue" is now a misnomer. The entire amount, with the possible exception of not over $125.00 actual haulage charges during Stock Show, is received for the service of bedding railroad cars and is paid entirely by the railroads.

Historically, over thirty years ago when the account

was first opened and due to a lack of convenient loading and unloading facilities and for other reasons, there was a certain amount of drayage for patrons and the revenue from this source was put into this account quite logically. The bedding of railroad cars with straw was practically unheard of. In fact the railroads would not permit it because of what they thought to be the added hazard of fire from engine sparks. If the cars were bedded at all, it was with cinders, sand or dirt, and this was generally done by the shipper or the railroad at the loading point and lasted through to destination. The cars were not cleaned at the yards at first and hence when livestock after sale was loaded into empty stock cars, there was generally at least a thin coating of cinders, sand or gravel left on the bottom of the car. Soon, however, this practice changed and respondent was called upon to haul cinders and sand for the stock cars loaded at its yard. The charge for and the revenues from this service, being still thought of as primarily haulage, was put into this account. Gradually the use of straw bedding increased and with the introduction of double deck cars became universal. Small houses for the convenient storage and handling of straw bedding were erected near the loading chutes, and our loading gangs took over the work of bedding the cars for which the railroad pays $1.00 per car in addition to the charge per bale for the straw. For no other reason than custom, the revenue derived from the service of spreading the straw is carried under the same account, i. e., "Drayage Revenue." It is a railroad service exactly to the same extent as the loading and unloading of stock cars, and is performed by the same men who load and unload the livestock, the wages of whom are excluded by the Examiner.

The Examiner has excluded the revenue received from the loading and unloading charge and has excluded from our rate base the value of the chutes, the land on which they are located and all other land and structures which he finds are part of the transportation service. As above stated, he has likewise segregated from respondent's yard labor account all wages and expense of the loading and unloading

gangs and has excluded those items. We submit that this so-called "Drayage Revenue" is in the same class and if the above items be excluded, this must be also. It results in the elimination of $3705.81 from the estimate of miscellaneous revenues to compensate for which a corresponding revision of the rate schedule must be made.

We estimate that an annual average of 6500 bales of straw is thus used by the "railroad department" of respondent's business. This can be more accurately checked if the Examiner desires. Our estimate is based upon the following: The great majority of the cars thus bedded for the five year period 1930-1934, inclusive, has been double deck cars for sheep and hogs. The straw is spread one bale to each deck. The "Drayage Revenue" is slightly in excess of $3700.00. Making an allowance of $125.00 for actual haulage revenue during Stock Show, leaves $3575.00. Our experience indicates that as an average 20% of the cars bedded by our loading gang are single deck. Using rounded figures, therefore, this means 700 bales for single deck cars and 5800 bales for double deck cars or a total of 6500 bales.

At forty cents per bale profit allowed by the Examiner in his proposed rates, this means $2600.00 profit, which should be eliminated from the estimate of future revenues to be paid by the shippers under the proposed rate schedule. We repeat that this profit on straw as well as the charge for bedding the cars is paid by the railroads and if all income derived from the railroads for the use of what the Examiner calls railroad facilities be excluded, these items must in fairness and in logic be likewise excluded.

The third item to which we take exception under this heading is the inclusion, under miscellaneous revenue on page 135 of the report of "Service on through hogs (watering, etc.) $2875.65," which figure he uses in his estimates of future income. The "etcetera" must be the service of spreading the corn in the cars after the hogs are unloaded for water and rest.

The nature of this charge is also not clear in the record because we had no indication that the government at the time of the hearing would attempt to exclude the loading and unloading chutes and income and expense incident thereto. We were warned of the government view concerning our railroad trackage because a similar attempt was made as to that item in the 1930 hearing and was disapproved by the court. The facts which we here state are easily susceptible of proof if the Examiner doubts any statement made.

Through hogs are handled almost exclusively at our river docks where equipment for watering is in the chute or unloading pens. These pens the Examiner has excluded. Hog cars on through shipments contain corn for feeding enroute either tied to the side of the car or partitioned off at one end. After unloading and while the hogs are watering, our loading crews go into the cars, spread the corn on the floor and then reload. The entire amount of $2875.65 was received by respondent for this service of spreading the corn on the car floor by our loading gangs and for the watering in chute pens by labor, the wages and expense of which the Examiner has excluded.

We submit that if the Examiner excludes the so-called railroad income, i. e., the loading and unloading charges and excludes from expense the wages paid the loading and unloading gangs, he must likewise exclude this revenue of $2875.00 which is no less and no more of a "railroad income" than the other items excluded.

To summarize, under this exception, we request the Examiner to make following adjustments in the proposed report:

1. Exclude from "miscellaneous income" of $80,823 found in paragraph 211 to be reasonably expected for the future and on the receipt of which the Examiner bases his finding of the reasonableness of the proposed rates:

Drayage Revenue	$3575.
Service on Through hogs	2875.

2. Eliminate 6500 bales from the Examiner's finding of 25,000 bales reasonably to be expected to be sold annually in the future (Report page 133, par 208) and exclude the profit thereon at 40¢ per bale from his finding of the procurable profit of $124,000 on sales of hay, grain and bedding in the future. (Par 211) .... 2600.

Total	$9050.

3. Adjust the proposed rate schedule to allow for these exclusions.

EXCEPTION VII.

Respondent excepts to the finding contained in paragraph 163 on page 108 of the proposed report that the sum of $100.00 a month or $1200 annually is a reasonable sum to be allowed in the future and covered into rates for the purpose of defraying the costs of hearings before the Interstate Commerce Commission.

The five year average expense for this purpose as shown by the evidence and covering the period 1930-1934, inclusive, is $3936.99. The Examiner states that after "giving due consideration to respondent's expenditures in the past and to the testimony as a whole," he finds the reasonable amount to be $1200 annually. We ask the Examiner to point to any testimony which warrants such a reduction below the five year average.

A stock yard without an efficient traffic department is not properly serving either its patrons or its stockholders. It has been proven in the past that eternal vigilance is necessary to keep the rates at a fair rate level for the shipper and on a fair competitive base for the company. For the five year period of the report, that vigilance cost the respondent $19,684.95, or an average annual expenditure of $3936.99. There is nothing in the future to indicate that this vigilance can be relaxed.

In the past five year period, we fought for and pro-

tected the sale-in-transit privilege at Denver which means about $50.00 per car of fat cattle savings to the producer and shipper and corresponding savings on other types of livestock. In the future we must attack the present excessive differential between the rates on livestock and meat, between certain long haul and short haul rates particularly affecting our territory and also certain rates now in effect around the market. These are but some of the problems. There are many others and we sincerely believe that there is no justification whatever from the evidence of record or otherwise that traffic protection expense will be less. If any mere estimate is to be made, we submit that there will be increased expense for this purpose.

We request the Examiner to allow an annual item of at least $4000.00 on account of Interstate Commerce Commission expense.

EXCEPTION VIII.

Respondent excepts to the finding contained in paragraph 164 on page 108 of the proposed report that the sum of $100.00 a month or $1200.00 annually should be allowed on account of Packers & Stockyards Administration expense. Respondent insists that the allowance is too low and should be increased.

The five year average expense for this purpose, as shown by the report is $8786.76, or a total of $43,933.80. Practically this entire expense was incurred in connection with the previous rate hearing. The present rate hearing has also been more expensive and the expense paid and incurred has far exceeded the allowance of the Examiner for the next five years.

An allowance of $1200.00 per year is entirely too small. Two trips from Denver to Washington and return by no more than two officials of the company will exhaust more than half of that allowance, leaving little or no excess for preparation of exhibits and possible rate investigations. It was pointed out in *Denver Union Stock Yard Co. v. United States*, 57 Fed (2nd) 735 at 753, that much as the parties may desire to avoid litigation, it cannot be avoided. Hence

it is the duty of the Secretary in the first instance to fix a reasonable sum on account of these rate hearing expenses, which sum should be amortized over the reasonable period of five years.

We urge and request the Examiner to fix an allowance of $5000.00 per year as a reasonable amount to be covered into rates on account of Packers and Stockyards Administration expense. In the light of history, the amount is not excessive.

EXCEPTION IX.

Respondent excepts to the findings of the Examiner contained in paragraphs 40, 41, 42, 46, 51, 58, 65, 75, 93, 97, 102, 104, 107 and 115, insofar as the Examiner in said paragraphs finds that certain land and the structures thereon are not used and useful for the reason that the same consist of railroad trackage and land, loading and unloading chutes and pens with the land on which they are situate, a railroad tool house, and yardmaster's office, all of which though owned and used by respondent are found by the Examiner to be transportation facilities as distinguished from stockyard facilities, and hence the value thereof is excluded by the Examiner from respondent's rate base.

Respondent does not deny that the land in question with the railroad trackage thereon, connects with the main line trackage owned by the railroads, and is leased to the carriers. Over this trackage live stock is delivered to and shipped from the loading and unloading chutes and pens which are situated adjacent to this trackage on land also excluded by the Examiner. We do deny, however, that any of these facts prevent these facilities from being used in the handling of livestock in commerce which is the definition of a stockyard facility under the Packers and Stockyards Act. We, therefore, deny the propriety of the finding which excludes them and excludes their value from the rate base.

That railroad switches, tracks and ample railroad connections are necessary to and part of a proper stockyards service cannot be denied.

Denver Union Stock Yard Co. v. United States, 57 Fed. (2nd) 735.

This same land and these same tracks and structures were found to be used and useful stockyard facilities in the case just cited. Nothing has happened since the decision of that case to change the situation. The mere fact that the railroad may be required under its tariffs to deliver livestock to the consignee unloaded from its cars, does not prevent the structures themselves from being a stockyards facility.

We submit that the value of all of this property should be restored to the rate base of respondent and the findings made in the paragraphs above listed be modified accordingly. We request the Examiner to make appropriate findings to this effect.

EXCEPTION X.

Respondent excepts to the findings of the Examiner, summarized and tabulated in paragraph 115 of the proposed report wherein the value of the land of respondent is found to be $772,428.00 and the value of that portion thereof found used and useful by the Examiner is fixed at $571,134.00. Respondent insists that these findings are contrary to the weight of the evidence, are without support in the evidence, and are arbitrary.

Respondent's witnesses placed a value on 131.045 acres of land owned by the respondent of $1,645,522.50, while the government witness valued the same acreage at $728,284.00. As the Examiner states, this discrepancy is too great to be accounted for upon the basis of a difference of opinion. He therefore ascribes it to the consideration of different factors. We ascribe it to an admitted difference in experience.

A glance at the two appraisals shows that there is a remarkably close similarity between the factors or elements of value considered by all the land witnesses. The discrepancy cannot be satisfactorily explained on that basis. Before his appraisal work in Denver for this hearing, the government witness had never appraised any Denver property; (Tr. 540, Abs. 165) had never assembled a large tract for industrial uses (Tr. 452 Abs. 140) and made no special

study of other large industrial tracts in Denver. He came to Denver January 7, 1935, and stayed a month. He states that he spent about half that time on land valuation and half on the valuation of structures.

Respondent's witnesses had been continuously familiar with Denver property for many years, all actively engaged in the buying and selling of real estate, and particularly versed in the valuation of industrial property. If market value is a fair test of actual value, and we submit it is, their testimony was unequivocal and emphatic that the land could be sold for the price they had placed upon the property.

When government witness Zelinski's lack of familiarity with Denver conditions and Denver market is compared with the fact that respondent's witnesses Eppich and Newcomb had appraised the land four times, the first time before the Packers and Stockyards Act had been enacted, it is not difficult to determine the cause for the discrepancy.

We agree with the Examiner where he states that the government witness did not give proper weight to certain sales and other factors. This occurred, according to the Examiner, in the case of Zones 1 and 9. We assert it happened in the case of all zones, except possibly zone 7. In fixing the value of zone 4, he gave no weight to the Local Beef and Mutton Sales, where that company paid in 1920 and 1922 more for land lacking in accessibility and subject to overflow than he allowed for Zone 4, which is an integral part of the industrial tract for any purpose. He paid no attention to the Burkhardt sale and Burkhardt written offer in fixing the value of Zone 6. No attack is made on the bona fides of that offer which is two and one-half times greater than the value fixed by the government witness and the Examiner. These examples could be multiplied. Suffice it to say that they are typical.

With the exception of the values in Zones 1, 2 and 9, the Examiner has adopted the values of the government witness, who—excellent man and thoroughly fine fellow that he is—is admittedly without experience. No value fixed by respondent's experienced witnesses—equally excellent men

and fine fellows—has even been remotely approached by the Examiner. Yet the Examiner says that as to Zones 1 and 2, in the exercise of his judgment, he finds the Examiner was too low to the extent of $500 per acre in Zone 1 and $1000 per acre in Zone 2. Thankful for small favors, we are nevertheless at a loss to find any logical basis for this difference in the amount of increase. Respondent's witnesses place a value of $17,000.00 per acre on the bulk of Zone 1 while the government witness found the value to be $8500.00 per acre. The Examiner finds $9,000.00 per acre. In Zone 2, respondent's value is $15,000.00 per acre while the government witness found $5000.00. The Examiner finds $6000.00 per acre. In Zone 9, respondent's witnesses found the value to be $20,000.00 per acre while the government witness found the value to be $15,246.00 per acre. The Examiner finds $16,000.00 per acre, but decrees that only half the land is used and useful. We submit that there is no basis in the record for the values selected by the Examiner.

The Examiner states that respondent's witnesses valued the property as a stockyards and culls out a bit of the cross-examination of Witness Ivins that if and when pens are placed on Zone 3, the topography and location is such that Zone 3 would then more nearly approach the value of Zone 2. The important bit of testimony of all respondent's witnesses goes without mention, namely that the tract could be sold within a reasonable time for a price equal to the value as appraised by them.

All witnesses agreed that the highest and best use of the tract is the stockyard use. We deny that our witnesses valued it on any different basis, but assuming for purposes of argument that they did err in this regard, was the error less in Zone 2 than in Zone 1? If not, why only an increase of $500.00 in Zone 1? Is an Examiner who claims no qualifications as an appraiser of land, qualified to determine the value by the exercise of that elusive faculty called judgment? The answer to this last question is that it is only when his judgment is supported by the facts of record. We deny that these values are supported by competent and substantial evidence.

We request the Examiner to substitute the values as found by respondent's witness for the used and useful land, including the so-called railroad land erroneously excluded (See Exception IX) in lieu of the values of such property contained in the proposed report.

EXCEPTION XI.

Respondent excepts to the finding of the Examiner contained in paragraph 211 and emphasized in the following quoted portion thereof:

> *"Moreover, respondent has not assessed a yardage charge against traders' livestock resold or reweighed for purposes of sale except that resold in the commission division. It is, therefore, found that respondents tariff schedule now in effect contains rates and charges which are unreasonable and discriminatory."*

And in this connection respondent excepts to the findings or statements made in paragraphs 192, 196, 198, 199, 200 and 201 wherein the Examiner states his conclusions that the yard trader does not contribute to the support of the market except by way of the profit paid on feed consumed; that the traders pay no yardage charge (implying a difference in treatment from other buyers) and thereby increases the yardage charges paid by shippers; that it is speculative to say the operations of the trader result in higher prices on the market; that trader shipments to other markets tend to lower prices at Denver; that free service in any manner or to any extent is furnished the trader with the result that discrimination exists or that another class of patrons, i. e., the shipper is charged an increased or excessive cost for the rendition of the service to that class; that the evidence of record does not warrant the rate-maker in relieving the traders of any yardage charge whatsoever and implying that other buyers share the cost of the conduct of the market and implying that any part of the livestock "sold on order" and "sold for slaughter locally" would be subject to a reweigh charge on traders. Respondent submits that these findings, statements and conclusions are not supported

by the evidence, are contrary to fact, contrary to law; and result in a discriminatory and confiscatory rate schedule. Respondent further excepts to the inclusion in the rate schedule, paragraph 212 on page 137 of the proposed report, of the schedule of charges under the heading "Resold and/or Reweighed for purp ses of sale."

We have heretofore pointed out in Exception Number 3 that the computations made and the factors used in determining the estimated amount of income from the so-called charges on reweighs and resales are erroneous, and grossly in excess of the facts, due to the misconception of the Examiner that livestock "sold on order" and "slaughtered at Denver," and carried over into paragraph 213 under the heading "resales" are transactions which would come within the proposed reweigh charge. We have also pointed out in Exception Number 1, that there is manifestly a fundamental misconception in the Examiner's mind that the charge imposed by the respondent is for yardage, whereas in truth and in fact it is a marketing charge.

The present exception, however, deals directly with the propriety of any reweigh charge, asserts that the conclusions of the Examiner are without foundation in the record, and denies that the failure to assess and collect a marketing charge against the traders in the case of reweighs is discriminatory or unreasonable. As a matter of fact we assert that the imposition of a charge equal to one-half of the regular charge for the use of the market in and of itself creates an unreasonable and discriminatory rate schedule.

There is no denial by the Examiner that the trader is an important part of the buying power on the market. This is amply supported by the record. Government witness Christensen testified (Ab. page 57) that it is to the interest of the shipper to have dealers on the market, and a few pages previously thereto the same witness had testified that the shipper is greatly interested in preventing anything that would hamper sales.

The government did not apparently care to call any livestock producer or shipper and examine him directly on

this point. Respondent did call not only three producer witnesses, but also called a yard trader, and one, who in addition to that activity is a large producer and shipper of live stock from his own ranch. There was complete unanimity of opinion on the part of all of these, and it was not in any manner changed by the extended and searching cross-examination of government counsel. We ask the Examiner to read again the testimony of witnesses Pace, Jamison, Mitchell and Wolf, and thereafter to read again the pertinent testimony of Mr. Pexton who, government counsel would be among the first to admit, is an expert in the stockyards industry, and one who has kept closely in touch with both the shippers and buyers of livestock. Witnesses Pace, Jamison and Mitchell are not connected in any manner with respondent and an accurate summary of their combined testimony would be about as follows: The producer of livestock is interested in the outlet at the market, and of course that means the buying outlet. It is almost axiomatic that the more buyers there are, the better the price because one buyer competes with another for livestock of the type, kind and grade in which he is interested. The trader is not only an important part of this buying outlet, but is often at certain seasons of the year, the only market, and therefore anything that would hamper the trader and hinder the market, would hinder the producer. Ordinarily, and perhaps for the most part, traders are not interested in the buying of fat cattle, or slaughter stuff, unless they are buying on order for some outside packer, that is to say, for some packer whose plant is not at Denver. Whenever, as sometimes happens, packer buyers "lay off the market" and the trader believes the fat stuff is going at too low a price, he will jump into the market and attempt to buy in the hope of subsequent profit. As two of these witnesses stated, this has a definite effect of stabilizing and raising the price on fat cattle. The big function of the trader, however, is to absorb the odd lot stuff, and the amount of small shipments to be thus absorbed is increasing, due to the increase in truck-ins. Mr. Wolf stated that it was only such large operators as his firm of Wolf Bros. which could

bid on and take rail carload shipments; that the bulk of the traders were small operators and were becoming specialists in handling the two, three and sometimes eight animals which come in by truck, and that they are chiefly responsible for the truck-outs at the market. Mr. Pace stated that the trader is a benefit to the shipper and producer, because he buys anything that comes in—livestock the packer would not touch, and that somebody has to do that. (Abs. 341). Mr. Mitchell testified that it is as important to have traders on the market as it is to have packer buyers from the producers' standpoint, and that he would not ship to a market that did not have trader buyers.

We repeat that there is absolutely no testimony in the record to the contrary, and I doubt if government counsel will deny this statement.

The position of the Examiner is apparently the same as that indicated by government counsel at the hearing, namely that in spite of this fact, the trader uses the facilities in some different manner than the ordinary buyer, and therefore should be charged for that use. We respectfully submit that there is no essentially different use, and that in any event no charge should be made.

A and B, two producers with cattle on the forest reserves near Minturn, load three cars each and ship them to Denver. The cattle are mostly feeder cattle of varying age, weight and condition, but there are some fat and some two-way cattle among them. Suppose A ships to John Clay and Company, and B to Drinkert and Emmert, two commission men at the yards, to whom the cattle are consigned for sale on the Denver market. Out of the eighty-five or ninety head in each shipment, suppose that about twenty are slaughter livestock and the rest feeders, out of which a car of fairly reasonably well matched cattle can be sold. By "well matched", we mean cattle of about the same age, weight and condition, so that under feeding they will put on about the same weight and mature about the same time. That is the way the cattle feeder insists on buying his feeder stock.

A packer buyer or packer buyers buy the fat stuff out of each shipment, while a Nebraska and an Iowa farmer buy the two carloads of feeders,—one car from A and one car from B. John Clay and Company and Drinkert and Emmert are each left with the equivalent of one full car of nondescript cattle. If they try to find buyers for a few head of matched stock out of the lot, they not only lose the benefit of the freight, but run the risk of being stuck with the rest and ultimately taking a low price, to the detriment of the shipper. The commission man's sole object is to get the highest price possible for his shipper, and it is expensive for the shipper to have the commission man forced to hold cattle.

Consequently, an effort is made to sell such cattle to traders. Let us suppose that a trader buys the balance of the two loads. He can do what the commission men are not equipped to do. He mingles the two shipments, and then sorts them. He may even buy more head of odd lot cattle from a place which sorts with Minturn, and out of his purchases can sort out three cars of *matched* cattle, perhaps two cars of light-weight, or long feeders, and one car of heavy or short feeders. He sells these to country buyers and is able to do so with the benefit of the freight. The producer is definitely helped, because his cattle are promptly sold and absorbed by the market.

So far as the shipper and the respondent are concerned, is the trader in any different position than the Nebraska and Iowa farmers in the above illustration? We submit that he is not. When the cattle are sold they are weighed out to the purchaser,—in one case the farmer; in the other, the trader. *Both are buyers, and this weighing* determines the price per head each buyer is to pay. The respondent provides a pen for the farmer-buyer without extra charge. It drives the cattle to it and he is permitted to use that pen for such time as he desires. Frequently the farmer keeps the cattle there for twenty-four hours or more before moving them out, because of branding, dipping, dehorning, etc., and only these special services and the cost of feed are paid by the farmer-buyer. The respondent provides a pen for the

trader buyer after his purchase, also without extra charge, and he is also permitted to use such pen for such time as he desires. Not merely frequently, but generally, the trader buyer moves the cattle out in less than twenty-four hours, a quick turn-over being his best assurance of profit. Witness Wolf testified (and there is no testimony of record to the contrary) that eighty per cent of the twenty-six thousand cattle he purchased on the Denver yards as a trader in 1934 and 1935 moved out within twenty-four hours. Of course, the trader, like the farmer, pays for the cost of any hay or grain fed to the livestock while in the yards after purchase.

But the government's position at the hearing, and the Examiner's position now, seems to be that the trader is in the position of buying and selling, and hence is in a different position from the farmer-buyer. This is likewise an unsound distinction. The farmer is in the position of buying and selling livestock for a profit. One is a constant patron of the market, and the other, the farmer, is an intermittent patron. If a buyer, as such, is to be charged his proportionate share of the cost or support of the market, then on any principle of public utility ratemaking, the intermittent patron should be charged more than the steady day-in-and-day-out patron. The fact of the matter is, however, that in the livestock industry the buyer never before has been and never should be charged for the privilege of coming into the market and buying.

The Examiner finds that the trader sells or reweighs for purposes of sale on the market. Let us examine the record on that. The only testimony of record is that of Mr. Wolf and the only exhibit is government exhibit 43, which, as we have stated before was in fact prepared by respondent, adopted by the government and introduced as a government exhibit. Mr. Wolf testified that he handled on an average thirty thousand cattle through the Denver yards; that during 1934 and 1935 he had handled approximately twenty-six thousand cattle through the Denver yards, only 17% of which were reweighed, the 83% selling on original weights. Of this 83%, 80% was sold to his

regular clientele, who look to Wolf Brothers to supply their needs and who are not on the market otherwise as buyers. The exhibit shows a slightly different percentage, namely 21% because all traders do not do the carload volume of Wolf Bros., and naturally the percentage of reweighs in odd lots and truck-in purchases is greater than in carload purchases, but the principle is the same,—namely, that on a very large percentage of trader purchases, the trader is in no different position, so far as the market is concerned, than the farmer or feeder or packer buyer, and uses no other or additional facilities. He receives no other or different service, except perhaps, as Mr. Wolf testified, less service than the ordinary buyer. The farmer, the feeder and the packer buyer is not charged a "half yardage", or any other charge for the privilege of buying on the market. Certainly as to this percentage the trader should not be charged, and we submit that is a matter of fact no charge can be collected from him in such case. Yet the Examiner includes in paragraph 212 a schedule of charges for livestock resold, whether or not reweighed. This we submit is erroneous.

If the Examiner means by the heading "Resold and/or Reweighed for Purposes of Sale" that the schedule is only to apply to those cattle resold on the Denver market or reweighed for the purposes of sale on the Denver market, then his entire schedule must be revised because the volume used in paragraph 213 to test the result of his proposed rates reflects livestock in the 83% classification of Wolf Brothers, none of which is either resold or reweighed on the Denver market.

What about the 17% of reweighs? There is one additional use made by the trader buyer in such case, namely a second use of the scale, but that certainly would not warrant a half yardage charge. The Examiner would not contend that of the 28¢ a head to be charged the shipper under his proposed schedule on cattle, one-half thereof is the weighing, and yet that is the only additional use made by the trader buyer even in the case of the 17% of reweighed cattle, except as to such cattle as are resuld for traders by

the commission men on the Denver market, i. e., plants, and these amount only to approximately 3% of trader purchases. The charge is not supported by the record nor is it justified.

The fact of the matter is that no free service whatever is rendered the trader. Our position is that so long as his operations are part of the buying power of the market, he is there like any other buyer for the benefit of the producer and buyer, and all service is included in the one and only charge made for the use of the market, that is the marketing charge, which is erroneously called a "yardage charge" by the Examiner. That the producer well recognizes that the marketing charge made is fair and reasonable is emphatically shown by the testimony of witnesses Jamison and Mitchell (Tr. 1446, 1450 and 1478; AB. 458, 459 and 469). Mr. Jamison and Mr. Mitchell are both producers of livestock of long experience.

The Examiner states that the claim of respondent that the operations of the trader result in higher prices to the shipper is speculative. The evidence is uncontradicted—in fact it is admitted by the Examiner,—that the trader performs a useful function on the market in buying livestock which would not otherwise be absorbed. A market which cannot absorb the supply of the commodity is glutted, and a glut on any market is followed by decreased prices as surely as night follows day. There is nothing speculative about that at all. Every producer witness testified that traders do stabilize and tend to increase the prices paid for livestock. One witness stated that because of this fact he would not patronize a market that did not have plenty of trader buyers. (Witness Mitchell Tr. 1478; Ab. 469.)

The Examiner also finds that the competition of trader livestock with fresh arrivals on the market is a depressing influence on price. This also is not supported by any evidence of record. We respectfully call the attention of the Examiner to the testimony of Witness Pace, a producer (Tr. 1074; Ab. 348) where he states that the small amount of competition with fresh arrivals does not hurt the shipper

in the long run, and to the testimony of Witness Jamison, also a producer (Tr. 1462; Ab. 463) that he did not believe the competition with fresh arrivals tends to decrease the price. We ask the Examiner to point to any contradictory evidence.

The Examiner finds that our failure to charge the yard trader some additional rate is discriminatory and unreasonable with respect to the shipper. This finding is not supported by the evidence. We have demonstrated above that the trader buyer, with the single exception of planted livestock, is in exactly the same position as any other buyer, that is to say, is part of the buying outlet of the market, for which the producer pays, and intends to pay, his marketing fee or charge. We respectfully submit that the practice has been in effect since the commencement of the stockyards industry, and so far as Denver is concerned, since 1886 no charge has been assessed against the buyer on the market, whether the buyer be a trader, or a farmer, or a packer. The presumption is therefore in favor of the reasonableness of the present practice. It should and must take strong evidence to warrant the ratemaker in overthrowing a long settled practice, and thus invade the managerial function.

We stated at the outset of the argument in support of this exception that the schedule proposed by the Examiner on livestock "Resold and/or Reweighed for Purposes of Sale" creates a discriminatory rate schedule. As we have pointed out above so long as the trader operates as an integral part of the buying outlet of the market, he is in the position of any other buyer and should bear no charge except that borne by any other buyer, namely the liability to pay for feed which his livestock consume as long as they remain in the yard. It is equally true that in the case of "plants" he occupies the position of any other seller, and should pay the full marketing charge. That this is what the trader in such case does now is shown by our tariffs on file with the Secretary. There is no ground in the evidence or in fact to charge the trader any different rate per head in such case than is charged the producer or the shipper, be-

cause the trader then uses the market in identically the same way that the producer uses it in the case of producer sales. To give the trader the right to consign his livestock to commission men, avail himself of the privilege of the market and sell through the machinery of the market for 14¢ a head, whereas the producer who does the same thing and uses the same facilities is charged 28¢ a head, is unjust, unreasonable and discriminatory. We submit that the present practice of the respondent is the sound, reasonable and non-discriminatory practice, which must be approved by the Examiner and included in the proposed report.

The conclusion of the Examiner that a charge on the trader will not hamper sales, will not tend to drive traders off the market and will not react to the detriment of the shipper is contrary to the testimony of every producer witness who testified on the subject. We ask the Examiner to read again the testimony of Witnesses Pace, Jamison and Mitchell *commencing at pages* 1039, 1143 and 1467 of the transcript, and summarized at page 335 A, 457 and 465 of the abstract. *Witness Pace testified* in substance that anything which would hamper the trader *would hurt* the market, and that the yard company should do everything in its power to increase the demand, including the trader demand. He stated that oftentimes the trader is the only market, and that the shippers figure that the trader makes the market at all times on certain classes of cattle. He testified that he had talked with traders, all of whom said that they could not stand a charge and would quit the market if the charge were imposed.

On cross-examination government counsel repeatedly asked these witnesses the question as to whether they really thought that a charge of ten or fifteen cents on a thousand pound steer which might sell for $150.00 would really affect the situation. Witness Jamison gave the complete answer to this when he said that any charge would lessen competition; that the charge must not be judged by the individual case, and that if the reweigh charges amounted in total to $15,000.00 or $20,000.00 a year, of course such charge would lessen competition and hurt the market. Witness Mitchell

also testified that any charge on the traders would hurt the market in his opinion. We repeat, there is no contrary testimony.

Government counsel in each case also asked these witnesses if they were familiar with the fact that a yardage charge is assessed against the traders at the Chicago market. The witnesses replied that while they did not know this fact definitely, nevertheless Chicago was in a different situation. Dan Casement, producer and shipper, when testifying at the 1930 rate investigation used the phrase that "Chicago is the end of the road" and that cattle must sell there. It is a recognized fact that conditions at Chicago are totally different than at any other central market. Government counsel then asked these witnesses if they were familiar with the fact that in recent hearings the Secretary had ordered yardage charges in various amounts to be assessed against the traders at Omaha, St. Joe and Sioux City. One of the witnesses replied that he knew it had been ordered, but that it was not being enforced; and we respectfully submit that the record of these other yards on this point is within the knowledge of the Examiner in this case and should be considered by him. That record is that at Sioux City, as of November 6, 1936, the yard company is not collecting a reweigh charge on any reweighs except on plants, and as to them it is collecting only the half yardage charge fixed by the Secretary. This practice, we submit, is discriminatory. It is a matter of common knowledge that Sioux City was in such dire need of revenue that it requested and was granted on August 15, 1935, an increase in rates over the Secretary's schedule theretofore in effect, and we submit that had Sioux City not felt that the imposition of a charge upon all reweighs was adverse to the best interests of their market, they would have collected whatever revenue might have been obtained therefrom.

At Omaha, in spite of the Secretary's order, no reweigh charge is being collected on shipments resold to move back to the country. Even at Omaha this constitutes a major portion of the trader sales. At Denver, which is primarily a transit or feeder market, such shipments constitute prac-

tically all of the *trader traffic.* We submit, therefore, that a reweigh charge similar to that now proposed to be ordered by the Secretary is not in force at Omaha.

At St. Joseph, although the yard company has been badly in need of revenue and was granted an increase of rates by the Secretary on August 17, 1936, the yard company has seen fit to reduce the reweigh charge on cattle from 17½¢ permitted by the Secretary, to 9¢; on calves from 11¢ as permitted by the Secretary to 6¢; on hogs from 6¢ as permitted by the Secretary to 3¢ and on sheep from 4¢ as permitted by the Secretary to 2¢. This reduction was made because the yard company at St. Joseph recognized that the higher rates were hampering sales and hurting the feeder market, and that whatever hurt the market hurt the producer.

Discrimination either exists or it does not exist. If it exists, it is not cured by the collection of less than the fair charge for the service rendered. If, as the Secretary has found at all of the above markets, and is proposing to find at the Denver market, it is discriminatory to fail to charge the traders on all resales and on all livestock reweighed for purposes of sale, that discrimination is not cured by imposing a charge only on such traffic as does not move to the country, or by waiving it on all except certain classes of that trader traffic, or by charging 9¢ for example, where the Secretary has found 17½¢ to be a non-discriminatory rate. This is a matter which cannot be left to the discretion of the yard companies. It was openly said in the arguments before the court following the Secretary's 1930 rate investigation at Denver, that there was nothing in the Secretary's order which required respondent to impose the charge if it did not care to collect the money. Such a statement is incompatible with the theory of discrimination.

We request the Examiner to eliminate the findings, statements and conclusions above excepted to, to find that the failure to assess against the traders a rate or charge on livestock resold or reweighed for purposes of resale otherwise than through commission firms, is not discrimi-

natory, but, on the contrary, is just, reasonable and nondiscriminatory, and to eliminate from the rate schedule the charges therein provided for on account of resales and reweighs for purposes of resale. We also request the Examiner to exclude from the rate schedule and from his computations for the purpose of determining the fairness of the proposed rates, all items incident to such resales and reweighs.

EXCEPTION NUMBER XII.

Respondent excepts to the finding of the Examiner in the proposed report that the property in Zone 9 devoted to the Stock Show is not used and useful in the rendition of services for which are charged rates, the reasonableness of which is being determined in this proceeding and the exclusion of the value of said property from respondent's rate base. Respondent further excepts to the findings that the show is a community enterprise; that the stadium was built by the stock show association out of donations procured and that respondent absorbs the deficits of that association. Respondent further excepts to the proposed report because the Examiner has not excluded the income directly traceable to and derived from the show although he has excluded the value of the land and structures from the rate base; it being axiomatic that when property is excluded, the income derived from or on account of that property must also be excluded in determining the reasonableness or unreasonableness of existing rates and the justness of proposed rates. The findings to which exception is here taken are contained chiefly in paragraphs 68, 70, 71, 113 and are reflected in the estimates of future receipts, in the rate factors used, in the proposed schedule of rates and in the finding that existing rates produce more than a reasonable rate of return, all of which findings should be eliminated by the Examiner.

A stockyard facility is one which has to do with the handling of livestock in commerce. The late Chief Justice Taft stated in *Stafford v. Wallace,* 258 U. S. 495, that the stockyard was but a throat through which the livestock passed from the great producing areas of the West to the

consuming centers in the East. We submit that land and buildings, owned by the respondent stockyard company, where any and every producer may ship his livestock, offer the same for sale and sell it at prices which, as the Examiner admits, are from $1.00 to $1.50 a hundred more than ordinarily received for like livestock are used and useful in the handling of livestock in commerce and must be included in the rate base.

This question was decided in *The Denver Union Stock Yard Co. v. United States,* 57 Fed. (2nd) 735, and that decision is final so far as this market is concerned, unless new evidence warranting a different decision has been presented. *There is no different evidence.* Every witness interrogated upon the point, and this includes government witness Christensen testified that the stock show had undoubtedly improved the quality of the livestock produced, had attracted buyers, had advertised the market, had increased the outlet for western grass fed cattle and sheep, and that these benefits spread throughout the entire industry whether or not the shipper availed himself of his opportunity to ship to and sell at the show. The Examiner recognizes all this (Proposed Order par. 30), but because of an erroneous belief both as to the testimony of record and as to the intent and purpose of the Act, says all these uncontradicted facts are beside the point. Dr. John R. Mohler, Chief of the Bureau conducting this investigation, not only recognizes the importance of such shows, but urges that every effort be made to stimulate them. We quote in part from Respondent's Exhibit 2 containing the authoritative statement of Dr. Mohler:

> "In the industrial world a firm which expects to prosper and produce dividends does not use obsolete methods and equipment. Junking old machinery and remodeling old factories takes both courage and capital. But in the end such a course is the wisest and most economical. * * *
>
> "How is the livestock industry meeting this same situation? Is there a readiness to admit the obsolescence of types of livestock that no longer meet

production needs and market requirements? Is there a willingness to discard former methods for newer ones that are better? Is the livestock industry as progressive as it might be? * * * There is evident need also for a closer relation between our standards for breeding stock and the utility value of the product. * * *

"Naturally we look to the great stock shows as the supreme authority on animal conformation. Hence every means of stimulating entries by the best breeders adds to the value of such shows."

We submit that in view of the decision of the United States District Court for the District of Colorado in the *case above cited*, and in view of the uncontradicted and unanimous testimony of record in this case, the stock show property is a stockyard facility and service within the meaning of the Packers and Stockyards Act, 1921, and the Examiner is without justification in excluding the value thereof from the rate base.

Frankly, we cannot understand the attitude of the government in this case in again excluding the stock show property. In view of the utter lack of supporting evidence, we are justified in stating that the Examiner has adopted the views of government counsel and is not basing his findings in this regard upon the testimony and exhibits as an impartial examiner is duty bound to do. There is no evidence that the stadium, or other buildings were built as the result of public solicitation of donations, yet the Examiner asserts that as a fact. The respondent owns all of the land involved and without donations or the solicitation of donations built all of the buildings to house the show, except the tile-barn, small sales pavilion and lunch room and those buildings it now has acquired. In addition to this, it vacates surrounding buildings during two weeks in January so as to have room for the show, which now ranks as one of the four most important livestock shows in the United States and in some branches of the industry as the most important. The Examiner correctly recognizes that the creation of the Western Stock Show Association, a non-profit corporation under Colorado law, was "a clever move" of respondent

to free itself of some burdens, which burdens are defined in the evidence as the demand for favors and favoritism.

There is no denial of the benefits of the show and that those benefits spread throughout the entire industry. The only contrary sentiment was expressed by Witness Collins who said that though he knew he felt differently from many others, he didn't like shows or any other activity which was aimed to teach people how to produce livestock and improve herds because it put a lot of people into the business who would fail otherwise and he felt it was better to let "the devil take the hindmost." This is a narrow and selfish view with which we *have no* sympathy.

There is no denial that the show is a great advertising medium. Witnesses Jamison and Mitchell testified to this. Government Witness Christensen also testified but thought that the expense was too great to be admissible under that heading. The producer witnesses testified that this advertising had greatly extended the sales territory for range livestock to the benefit of the producer. Respondent presented facts, figures and exhibits supporting this fact. Respondent takes the position that in view of the benefits, the expense is reasonable. It also takes the position, that even though the main object of the show were for the expansion of the business of the Yard Company, respondent is entitled to have this property included in its rate base on the theory that whatever expense is incident thereto less any and all income derived from the use of the property is a reasonable expenditure for the expansion of its business. See *West Ohio Gas Co. v. Public Utility Commission*, 55 Sup. Ct. Rep. 316 at 321.

We further point out in this exception that the Examiner has not followed the equitable practice of eliminating income from "not used and useful property" when the property itself or the expense incident thereto is eliminated. He does throw out of the direct earnings of respondent $3547.50, which is the ten year average rent received from the stadium and show buildings. Respondent's Exhibit 13 shows additional earnings in the yards directly due to the

show averaging $11,592.14 per year for the past six years, but this sum is not eliminated from earnings either in determining the reasonableness of the existing rates or the reasonableness of the proposed rates. The unrefuted testimony of record given by representatives of the management and by producer witnesses supports this exhibit. There is no contrary testimony. We submit that either the property must be restored to the rate base or the earnings derived therefrom must be also excluded.

We submit that unless the findings of the Examiner be changed, the proposed order and the rate schedule thereby decreed, will confiscate a large and substantial portion of respondent's property contrary to law. We adhere to the principle stated by Mr. Justice Cordozo in the West Ohio Gas case (supra) that without supporting evidence of record, there is an absence of due process as required by the Constitution of the United States. There is no evidence of record which supports the finding that the Stock Show and the property devoted thereto is not a stockyard facility and service within the meaning of the Packers and Stockyard Act of 1921 under which this investigation is held.

We request the Examiner to amend and alter the report so as to find that the entire property in Zone 9 is used and useful property, to include in the rate base the fair value of such land and of the structures thereon and to amend his rate schedule accordingly. In default of this, we insist that the earnings due to the stock show must be eliminated from the Examiner's computations and the rate schedule correspondingly increased.

EXCEPTION XIII.

Respondent excepts to the disallowance by the Examiner of the going concern value of respondent's plant and the exclusion of any such value from the rate base. In this connection, respondent specifically excepts to the following findings contained in paragraph 138 of the proposed report:

> *"The testimony shows that the various witnesses arrived at their valuations having in mind that*

> *the property was a part of a going concern and that their values were arrived at with this element in mind. In adopting the cost of reproduction new less depreciation of the structures and the value of the land as found consideration has been given to the element of going-concern value and the values so found include the value of the property as a going concern. To include an additional specific amount in the rate base would be a duplication and no separate allowance is, therefore, made on account of going-concern value.''*

Respondent submits that these findings are contrary to fact and to the evidence of record, and that unless a fair going concern value be allowed in the final findings and order, the same will be confiscatory.

We are at a loss to understand how or on what basis the Examiner makes the finding that the property of respondent was valued as a going concern. Certainly government witness Zelinski, whose reproduction new value was accepted by respondent and adopted by the Examiner, did not value either the structures or the land upon any basis which the Examiner can remotely deem to include any element of going concern value. This is manifest from the record.

Witness Zelinski found the reproduction new value of the structures, i. e., what the actual cost would be today to reconstruct the pens, paving, buildings, equipment, etc., of the respondent. He testified (Tr. 561, Abs. 171) that he did this by ascertaining the January 1, 1935 scale of wages for all classes of labor and the unit price as of the same date of materials. He testified that his unit prices were determined by writing lumber, concrete and brick men in this locality, determining what their bids would be for the material delivered on the ground and from data in his own office. He introduced his unit prices for materials as one of the government exhibits in the case. He then testified in minute detail how he and his staff of engineers and assistants had inspected each part of the structural property capable of actual inspection, such as the paving, pens, sheep barn, exchange building, etc., to determine the actual con-

dition of these structures compared with new and in this manner determined a per cent condition. As to such items *not capable of exact detailed inspection throughout*, such as the water system and sewage system, he testified that he took into consideration soil conditions, that is to say the lack of corrosive or destructive elements in our soil and verified that as best he could by actual inspection in manholes, sewer outlets and hydrants. On this basis, also, he determined for these items the condition per cent compared with new. By applying these percentages to actual January 1, 1935 reproduction cost, he fixed the reproduction cost *less depreciation*. We submit that this method does not include any extra allowance for going concern value.

As to the land, *the testimony* of the government witness absolutely negatives the possibility of the allowance in his valuation of any going concern value. The following brief reference to the summary of pertinent portions of Mr. Zelinski's testimony is sufficient to demonstrate this.

Tr.	Abs.	
364	107	He valued the land as naked, unimproved land.
	121	He testified that in valuing the land, he stripped it of roadways and sewers as constructed by the yard company, and hence in viewing the tract from an appraisal standpoint "it is necessary to take into account the absence of dedicated public streets and alleys to serve so large an area." Later on in his testimony, he states that this influenced his appraisal downward. We quote this later testimony verbatim:
390	127	"Yes, I made the statement on page 13 of my report that it is necessary to take into consideration the lack of dedicated streets and alleys. I took that fact into consideration because in going on the concept that these lands are stripped of all improvements that are upon them, naturally the roadways which we have inventoried in our engineering report are considered stripped off the property, so that the area becomes a very large area without any access shown. Stripped of these improvements that area has its access only through what one would call stub end

Tr. Abs.

streets, except as far as Race Court is concerned."

448 138 "Where I spoke of the absence of highways in the tract, I meant an absence of dedicated public streets. The absence of dedicated streets under certain circumstances can be an advantage in connection with the tract for a large industry but is not always so. *You must remember in this case I am valuing this property not for the special use and in the special way that the Stock Yard Company is using it.*" (Italics ours.)

524 159 "With regard to the difference in value between Zone 1 and Zone 2, to begin with I am not considering the market activity that is on those zones at the present time as a gauge of values because stripped of its improvements I don't know whether the stockyard arrangement would be rebuilt the way it has been even though I am valuing the property from the standpoint of the highest and best use. *In other words, my shading down of the values from Zone 1 to Zone 2 is not on the basis of the actual use which is made of that property.*" (Italics ours.)

607 182 "Yes, I testified that I had appraised this property in accordance with my interpretation of the Minnesota rate case, which is with all the packing houses and other related industries in place, *but with the stockyards and the improvements which themselves constitute the underground and superficial structures of the stockyards removed.*" (Italics ours.)

We submit that it is impossible to say from the record that the Examiner included any element of going value in his valuations of the land.

It may well be that respondent's land appraisers considered the earning potentialities of the tract in fixing their values, and if this be interpreted as an element of going value, then it may explain a substantial portion of the difference in land valuation of $917,268.50 between government witness Zelinski's "bare-land" appraisal and the appraisal of respondent's witneses. But the Examiner does not include respondent's land witnesses among those

who testified on going concern value. He lists the government witness Zelinski, respondent's engineer Hyder and respondent's assistant general manager Pexton. Neither Hyder nor Pexton testified as to the value of the land or structures. Of these three witnesses, only the government witness did so and we submit that in the light of his recorded testimony, the finding of the Examiner that the property was appraised as a going concern is clearly erroneous.

In paragraph 135, the Examiner states that "the assistant general manager of respondent testified that respondent had donated to packing companies and railroad companies land" to induce them to locate near respondent's stockyard. This is true, but the subsidies were not only of land, but of cash, machinery and even capital stock as well as land. Respondent's exhibit number 15 is the detail of these subsidies as shown by respondent's books. To the total original sum thus used for these, there is added the carrying charges to date of the gift, not as the Examiner implies in paragraph 136 to the date of the hearing, hence these carrying charges could not reach infinity.

That part of the statement shows the complete misconception by the Examiner of our position. The only possible going concern value which a public livestock market can have is that value which, over and above the value of the physical plant, is inherent in the market itself. The Examiner persists in regarding a stockyard as a conglomeration of pens, sheep sheds and barns. His error is fundamental. A public livestock market, such as the Denver Union Stockyard is not a feed yard such as at Laramie, Wyoming, or Pueblo, Colorado. At such railroad or feed-in-transit yards, it may well be that the only going concern value is inseparably linked with their strategic location from the transportation standpoint and hence when the land is valued for its "highest and best use," every necessary element of value is inevitably included. That, we emphatically state, is not the fact in the case of a public stockyards market. There this added element of value, called going concern value, arises by reason of the existence and the

laborious creation over a period of years of a buying outlet capable of absorbing the supply. Nor is this static, for when the buying power exceeds the supply, new sources of supply are tapped, requiring in turn increases in buying power. It is this cycle of progression which makes a healthy market and compels recognition of going concern value, as a separate element.

The Examiner states in paragraph 136 that "original cost of land which is given away plus carrying charge neither indicates the presence of going concern (value) or measures its amount though present." We take issue with that statement. It is not universally true and most certainly is not true in this case. We do not contend that the total amount of such subsidies is necessarily the "dollar-and-cents" value of going concern value. It may be the same or it may be more or less than that amount. In certain types of industry, it may be no indication whatever of the existence of this element of value. But in an industry where going concern value is chiefly dependent upon the existence of a market, i. e., the ability to obtain and steadily absorb the commodity, we insist that the amountof these subsidies determines or at least is strongly indicative of the *cost* of that element of value. If the market has progressed, present value should be recognized as being in excess of cost. The Denver market today ranks as the largest sheep market in the nation. It is the largest pure-bred bull market. It is the fourth largest feeder cattle market. There is no protected franchise monopoly in the case of a stockyard—no certificate of convenience and necessity required before construction of a competing plant. If a great livestock market were a matter of easy construction and success, Denver would not be the largest and practically the only *general livestock* market between the Missouri River and the Pacific coast, drawing its supplies from as far west as Oregon and Washington and with a buying outlet stretching in large volume to the Atlantic coast. It is the product of these years of effort, coupled with the expenditure of large sums of money in subsidies and other intangibles which we term the going concern value of respondent and

for which a separate allowance must be made in the rate base.

The Examiner impliedly admits that going concern value does exist in this case but excuses his disallowance thereof as a separate element on the basis (1) that it is included in the valuation of the land and structures, and (2) that the record is not sufficiently definite to permit the fixing of a separate allowance. We have already demonstrated from the record that the method followed for fixing the value of land and structures excludes any element of going value. On the second excuse of the Examiner, we insist that with the progressive history of the Denver market and the success of respondent in building that market, the cost of the acquisition of that dependable day-in-and-day-out buying demand is the minimum value of this element which must be included in the rate base. There is no contrary testimony on this. We do not have a case where because of conflicting testimony, the Examiner and the Secretary is permitted to choose between two different estimates of value. In the absence of proof to the contrary, the minimum figure at least must be found by the Secretary.

> *Westinghouse Electric Co. v. Denver Tramway Co.*, 3 Fed. (2nd) 285 at 298.

The finding of an administrative board not supported by evidence is arbitary and violates the constitutional guaranty of due process.

> *West Ohio Gas Co. v. Public Utilities Commission*, 55 Sup. Ct. Rep. 316 at 319.

Absolute definiteness is not essential. In the 1930 hearing, the Secretary allowed ten per cent. of the physical values as the going concern value of respondent's plant. There was no definite evidence to support this and respondent attacked this finding in court on that ground. The three-judge court, speaking through McDermott, Jr., said:

> *(The Denver Union Stock Yard Co. v. United States*, 57 Fed. 2nd, 735 at 743, 744):

> "The government introduced no witness who gave his opinion as to going concern value; but the history and value of the stockyards were before the Secretary, and from them he could form a judgment as to that value. He was not bound to accept the opinion evidence offered. The Secretary recognized that there is a value to a going concern that is not reflected in the physical structures, and allowed approximately 10 per cent. of the physical values. That such a value exists, which should be recognized, is abundantly settled. * * * (Citing cases)
>
> "There may be businesses in which it is possible to compute with some degree of accuracy this element of value; but, even if accurate computation is not possible, a value which actually exists should not be ignored because of the difficulty of its measurement. There is no rule by which the value of a leg or an arm can be accurately measured in dollars and cents, nor by which pain and suffering can be computed; yet triers of fact do evaluate such things. By the same token, difficulty of measurement should not amount to a denial of right."

We request the Examiner to eliminate the findings complained of in this exception and to substitute therefor a finding of going concern value of such amount as he deems proper not, however, less than the minimum amount of $325,500.00, and to make appropriate increases in the proposed rate schedule.

EXCEPTION XIV.

Respondent excepts to the finding made in paragraph 165 of the proposed report excluding from the expenses of respondent all dues, donations and subscriptions except $325.00, which amount the Examiner finds reasonable.

The Examiner has adopted and now proposes that the Secretary adopt the throw-out schedule of the government auditor, government exhibit number 41. That exhibit shows that in the opinion of the auditor only $223.25 of the dues, donations and subscriptions out of a total of $3823.84 is allowable. His five year average is $318.13, which the

Examiner graciously stretches to $325.00. Of the $223.25 allowed in 1934, he included:

I. C. C. Traffic reports	$25.25
Traffic Service (a publication)	10.00
Tax Payers Review	5.00
Traffic Red Book	8.00
Federal Income Tax Service	66.00
Drovers Year Book	1.00

totaling $115.25, all of which are expenditures for doing business and should not be deemed donations, subscriptions or dues. Of the balance of $108.00, there are lunches during the feeder auction, explained in the testimony to be coffee and sandwiches for the sellers and buyers, and 4-H club lunches, totaling $89.00. These lunches have a direct connection with the business of the respondent and should not be classified under this head. This leaves as actual donations and subscriptions allowed $4.00 for flowers for sick employes, $3.00 for pop or other miscellaneous entertainment of employees during a hay-ride and a $12.00 subscription to the Denver Post.

The Examiner has excluded such items as the memberships in the Denver Chamber of Commerce which has a livestock division, in the United States Chamber of Commerce, in the Junior Chamber of Commerce, in the American Stockyards Association, in the Denver Traffic Club, in the Denver Commercial Traffic Club and in the Denver Live Stock Exchange. These memberships in strictly business organizations total $1269.09. These are not charitable donations but in the view of the management absolutely necessary business expenses, as the record shows. Irrespective of what the Examiner's view may be as to the right of a regulated industry to make charitable contributions, he is in error to exclude these business expenses. These are just as much business expenses as those allowed by the Examiner and tabulated on the preceding page.

We take issue with the Examiner on charitable contributions. The total of these items amounts to $1491.00—a truly trivial amount for a corporation the size of respondent. In this $1491.00 is a subscription of $1,000.00 to the Com-

munity Chest, a combined *community effort to care* for necessary charities.

To draw the line, as the Examiner attempts to do, "at those contributions which are of peculiar benefit to employees and patrons," is too narrow and arbitrary. The patron derives decided benefit from a market which has the respect and support of the community.

The government put on only one producer witness and questioned him on this point. He was Mr. Collins, President of the American National Livestock Association. We quote from the summary of his testimony, appearing at the pages indicated:

Tr.	Abs.	
621	186	"As to expense of $135 for entertainment of the American National at its annual meeting, which was made by the stockyards company, my version of that is the same as any kind of business,—I don't care whether it is the stockyards business or my business, I feel that anybody ought to have the right to donate or contribute a little if they want to or feel like it. I know I have a business out here at the stockyards, the Blackleg Company, and we make quite a few contributions to different things, and strictly speaking maybe we shouldn't do it, but we feel as public-spirited people we ought to kind of go along with those things in a way. Yes it figures in our cost of doing business, and people ought to have that right if they don't abuse it."
645	193	"As to the whole question of donations and as to whether or not the total amount spent by the Stock Yard Company is only 3/10 of one per cent of the income, I would say that if it is not abused, practices of that kind would not be items of great importance, but I don't think the charge would be so heavy that it would particularly affect anybody. Yes, I think the regulatory power should go to the question of abuse rather than to the particular item."

The Court held the same view in *The Denver Union Stock Yard Co. v. United States*, 57 Fed. (2nd) 735 at 753.

"The Secretary finds that 'it is customary for corporations to make donations for such purposes.' This is, of course, true, for community chests, funds for the relief of unemployment, welfare associations, chambers of commerce, and other such by-products of civilized society must be supported by the business interests of the community. The Secretary excised $81.75 from the expense account of petitioner, because, in his judgment, the shippers and employees received no benefit from such donations. The amount involved is insignificant, and the items excluded are not readily identifiable. The test applied by the Secretary is rather narrow. If the stockholders or directors of a corporation are willing that their corporation do its part, in a reasonable way, in carrying the public load of the community the prosperity of which is closely interwoven with its own, it would seem to be an exercise of managerial power not subject to the veto of a public official concerned only with the protection of the public against extortion."

The Examiner implies that the finding is made in accordance with the decision of the Supreme Court in the St. Joseph case. So far as the reported decision is concerned, this question was never passed upon by that court.

We agree with government witness Collins that in a question of this sort, the government should confine itself to the question of abuse of the managerial function, rather than to the particular item. Like Mr. Collins, we "feel that anybody, whether it is the stockyards business or any business, ought to have the right to donate or contribute a little if they feel like it" and even though, as he says, such donations figure in the cost of doing business, "we feel as public-spirited people we ought to kind of go along with those things."

We request the Examiner to alter and amend his finding contained in paragraph 165 so as to include an annual allowance on account of dues, donations and subscriptions of $3250.00 and make appropriate increase in the schedule of rates.

EXCEPTION XV.

Respondent excepts to the elimination from the expense account on page 106 of the proposed report of the items of "Traffic—Solicitor's Salaries," "Traffic—Soliciting Expense" and "Advertising" in a five year average amount of $472.86, $433.36 and $513.17, respectively, such exclusion, so far as respondent can ascertain, being wholly unsupported by any evidence.

At page 106 of the proposed report, which is the tabulation of the expenses of the respondent for the five year period 1930 to 1934, the Examiner shows for each of those years under certain bulk headings the total expense, the amount excluded and the amount considered, and reference is made to schedules contained in government exhibit 38 which is the comprehensive audit of government witness Bufkin. Where the exclusions are equal to the total expense, it is, of course, possible from the reference to government exhibit 38 to determine the nature of the exclusions, but in the instances above pointed out, this is absolutely impossible.

For example, schedule 66 on page 171 of government exhibit 38 shows for the year 1934 total "Traffic—Solicitor's Salaries" of $6929.83 which matches with the figure in the first column of page 106 of the report. The Examiner, however, has excluded for that year $491.52 of such expense. We submit that it is wholly impossible to carve that amount out of the figures given in government exhibit 38.

Nor does the government exhibit 41, which is commonly referred to as Witness Bufkin's throw-out schedule, enlighten us in any manner whatsoever. Page 3 of the last mentioned exhibit, which contains the schedule of expense eliminations, contains no elimination for solicitor's salaries, nor for soliciting expense nor for advertising. The only advertisements excluded anywhere is excluded under the heading of "Dues, donations and subscriptions" and all such items have been excluded there. The expense elimination complained of in this exception, therefore, is

something different, and we submit that no segregation of any of the amounts listed above appears in any government exhibit and was not brought forward by the government at the hearing, does not appear of record and no opportunity whatsoever has been given respondent then or now to explain or testify concerning these proposed eliminations.

Promptly after receipt of the proposed order we wrote the Department of Agriculture requesting information concerning these items and an explanation of how the segregations were made and of what they consist. We again wrote on November 17th. We again wrote the Solicitor on November 24th. No explanation has been received. We have been repeatedly advised that the department is working on the matter and that as soon as the data is available, it will be forwarded to us. It strikes us that if these segregations are so difficult to ascertain and explain, that is proof positive that they were not the subject of any testimony at the hearing and do not appear of record.

We submit that these eliminations are improper, being wholly unsupported by the evidence, and the sums therein involved must be restored to the expense account of respondent and reflected in the Examiner's computation of proper expenses in the future. Although the items themselves are small, their restoration to the expense schedule together with other items required to be restored by these exceptions will render an appropriate increase of the proposed rate schedule essential.

We request the Examiner to restore the above items to the expense account of respondent and to make the appropriate changes in the rate schedule.

EXCEPTION XVI.

Respondent excepts to the proposed report of the Examiner in that it fails to make allowance for certain necessary expenditures in the future all of which have arisen or the necessity therefor become fixed since the hearing of this cause and all of which are of such nature that the Secretary can take judicial notice thereof if he will.

The Examiner took judicial notice of the Revenue Act of 1936. He should also take judicial notice of the Social Security Act and the correlated Colorado act just passed for the purpose of making the Federal Act applicable to Colorado. He should also take into account the Colorado state income tax provision for which was made at the last election.

1. The Federal Social Security Act imposes a tax determined by a certain percentage of the gross payroll. The rate during 1937 is 2% and during 1938 and each year thereafter 3%. This is to be paid by the company the same as any other tax and is in fact a direct governmental impost. The earliest date at which the order of the Secretary, if entered, can take effect is 1937, and hence in any forecast of the product of the proposed rates for the purpose of determining whether or not the net return is equal to the fair rate of return as found by the Examiner, the year 1937 is the first year to be considered.

We point out in Exception XVII, that respondent has increased the salaries and wages of its employes on the average of 8% over the 1935 wage scale. If, then, we take the 1935 payroll of $212,395.00 as a base, there being no contention on the part of the government that we employ too many men, increase that by 8% as the estimate of the 1937 payroll, and deduct salaries in excess of $3,000.00 per year, this leaves a net payroll subject to the Social Security Act of $216,986.00 in all departments. Computing the tax on that figure, we find that during the next five years respondent will pay a tax annually on account of the Federal Social Security Act as follows:

Year	Per Cent.	Amount
1937	2%	$ 4,239.72
1938	3%	6,409.58
1939	3%	6,409.58
1940	3%	6,409.58
1941	3%	6,409.58
Total		$29,878.04
Five year average		5,975.60

The act recently passed by the Colorado legislature in special session levies a tax on the gross amount of payrolls as follows:

Year	Per Cent	Amount
1937	1.8%	$ 3,905.75
1938	2.7%	5,858.62
1939	2.7%	5,858.62
1940	2.7%	5,858.62
1941	2.7%	5,858.62
Total		$27,340.33
Five Year Average		5,468.06

These two items result in a combined social security tax of $11,443.66 average for the next five years. We recognize that the amount of the above tax to be covered into rates will be decreased if the Secretary adopts the proposed exclusion of expense incident to the so-called railroad properties of respondent. To this proposed exclusion we have already taken exception. Our position in this exception is clear, namely, that the Social Security tax, both state and federal, is and will be a necessary expense of doing business and allowance therefor should be made in the rate schedule if confiscation is to be avoided. We submit it stands on identically the same basis as the Federal Income tax for which allowance is made by the Examiner.

2. Colorado State Income Tax. The exact amount of this tax cannot now be determined. A constitutional amendment was adopted at the last general election authorizing the enactment of an income tax act for the State of Colorado. At the same time a constitutional amendment was adopted authorizing the adoption of an old age pension act with the minimum of $45.00 per month. It is conservatively estimated that this alone will necessitate a tax of 8%. On this basis an annual tax of $15,660.00 would be assessed against a return of $195,750.00 which the Examiner finds as reasonable. (Paragraph 182)

If the Examiner deems this too uncertain at this time, we respectfully suggest the withholding of the order in this case until the passage of the act by the incoming legislature

which will convene January 8, 1937. The passage of such an act is regarded as a mandate from the electorate and will not be delayed.

Respondent requests the Examiner to make appropriate findings and allowances to meet the expenditures above indicated. Respondent requests an allowance of $11,443.66 to cover the operating charge due to the Social Security program and not less than $15,660.00 on account of the Colorado income tax. To fail to make due allowance for these expenditures will inevitably result in confiscation of respondent's property.

EXCEPTION XVII.

Respondent excepts to the proposed rate schedule contained in paragraph 212 of the proposed report for the reason that it is so low as to be confiscatory and for the further reasons it provides for the assessment of charges on a class of traffic for which no rate or charge can be properly assessed or imposed, is discriminatory and is based on rate factors which are themselves erroneously determined.

Except for the one factor hereinafter mentioned, this exception incorporates all previous exceptions and the arguments in support thereof. Each exception noted with the exception of Exception I calls for an increase in the proposed rate schedule. We submit that unless they be granted and the appropriate upward revision of the rates made, respondent will not receive a fair return upon the value of its property and confiscation will result. The discriminatory nature of the proposed rate schedule is pointed out in Exception XI.

The additional factor which renders the proposed rate schedule too low is the 8% increase in wages granted all employes of respondent except the four executive officers. The Examiner and the Secretary can and should take judicial notice of a fact universally known and shown by government bulletins, namely that the cost of living has increased. It is but fair and proper that this fact be recog-

nized by the management. The increase is in line with increases recently granted similar classes of labor in the packing industry and cannot in fairness be delayed. The increase will add to operating expense during the year 1937 and thereafter a minimum of $14,700.00. If the loading and unloading labor be excluded, which we submit is improper (see Exception IX) the annual increase in operating expense is reduced to $12,621.00. Both the above figures are based on the 1935 payroll which is used because a portion of the 1936 payroll will have these increases included therein and is therefore not an accurate check.

The Examiner has available to him the facts and figures necessary for checking this statement if he so desires. Or if he prefers we will certify present payrolls as of December 1, 1936, and will show thereon the total to which this increase would have amounted for the first eleven months of 1936.

We request the Examiner to make this appropriate revision of the proposed rate schedule required by Exceptions II to XVII inclusive.

CONCLUSION

Respondent requests the Examiner to adopt each and all of the exceptions above taken and to amend his order and the rate schedule accordingly. This may sound presumptious, but we respectfully submit that there is no escape from the fact that confiscation will result unless the modifications requested above and shown in the following tabulations are made, irrespective of what the Examiner's position may be upon the question of reweighs or trader yardage or upon the question of railroad facilities. These items alone total $65,270.14 which far exceeds any so-called cushion of $10,606.00 referred to in paragraph 213 of the proposed order.

Exception II:

Overstatement of prospective hay sales used in determining the product of the proposed rates $17,460.00

Exception III:

Overstatement of prospective income from the so-called reweigh charge, attempted to be imposed upon livestock "Sold on Order" and "Sold for Local Slaughter", which is neither resold nor reweighed 12,161.48

Exception IV:

Capital stock tax 2,534.00

Exception VI:

Revenue of the railroad department, now carried under the account heading of "Drayage Revenue" and "Service on through hogs (water, etc.)" and profit on bedding of railroad cars 9,050.00

Exception XVI:

Social Security taxes both state and federal 11,443.66

Exception XVII:

Increase in operating expense, due to 8% wage increase (minimum) 12,621.00

Total annual increase needed in rates to cover above items $65,270.14

None of the above, we submit, present any controversy. They are omissions by the Examiner, and stand upon the same basis as other items allowed by the Examiner in the proposed report. In Exceptions III and VI we are even assuming for purposes of argument the government position on the questions of the reweigh charge and the railroad or transportation property.

In addition to the above, we submit that certain items must be restored to the rate base and that no controversy, in any proper sense exists as to them. The Examiner's findings are wholly unsupported by the record in regard thereto:

Exception XIII:

Allowance as a separate item of a minimum of $325,500.00 going concern value. The return thereon at the rate of 6¾% found fair by the Examiner is $21,971.25

Exception XII:

The Stock Show. The value of the excluded land plus 84% of the reproduction new value of the structures thereon, also excluded is $276,720.00. At 6¾%, less excluded rental of $3547.50 to be returned to income (Carrying Costs, taxes, depreciation should also be added) 15,127.04

Additional items to be covered by rates on account of the above increases in the rate base $37,098.29

We recognize that the Department, and apparently the Examiner, tenaciously clings to the theory that because all growers do not patronize the show and because, as the government seems to think, the show caters to pure-bred livestock, it is not a stockyard facility or service the cost or value of which is to be covered into rates. The Department, and the Examiner are prejudging the matter and permitting their personal views to override the express evidence of record. To the above figure of $15,127.04 on the stock show property should be added taxes, insurance and all the other carrying charges, the expense of which is shown in government exhibit 41, and excluded by the Examiner. We cannot state the exact amount of these items, but they can be computed easily by the government auditor from his "throwout" schedules and the other government exhibits of record.

We do insist, however, that if the Examiner adheres to the government theory of exclusion of the stock show and everything that goes with it, he must be consistent. We submit in such case that he must then exclude from income past, present and future $11,592.14 of earnings of respondent directly due to the show. This is the five year average

in the past for this item, and the safest and best guide for estimating the future.

There should likewise be no controversy concerning the allowance of at least $2716.63 of the tax on undistributed profits. We admit that the balance of the amount claimed in Exception Number V is controversial. The Examiner states that if we continue our dividend policy, we will satisfy the requirements of Section 14 of the Revenue Act of 1936, and have no such tax. *That is not the fact and our dividend policy cannot be changed to make it a fact.* We have a contractual obligation to retain and pay out otherwise than as dividends $30,000.00 annually, but that contractual obligation is not one for which the government permits a credit against "adjusted net income." A further income tax, therefore, of $2716.63 is imposed. The Examiner has made allowance for the balance of the Federal income tax imposed by the Revenue Act of 1936. He cannot properly exclude the remaining portion of the same tax imposed by the same Act.

As to the tax on the requested annual reserve of $15,000.00 for expansion of business, that is doubtful because we believe such a reserve can be allowed in such way as to avoid the tax. That a proper allowance to a regulated industry for the expansion of its business must be made is not open to controversy. See *West Ohio Gas Company v. Commission,* 55 Sup. Ct. Rep. 316 at 321, cited supra. This item of $15,000.00 can properly be allowed by the Examiner for this purpose.

We believe the exclusion of the railroad trackage and land and particularly the exclusion of the loading and unloading chutes and pens is erroneous, and for that reason we take Exception Number IX. So far as the practical effects on this case is concerned, we admit that it presents an academic question. That, however, is not the case with Exceptions X and XI concerning the value of respondent's land and the imposition of the reweigh charge. These go to the very heart of the case, and their denial further

stamps the proposed rate schedule and order as confiscatory. We sincerely believe that the land values proposed to be found by the Secretary are unsupported by any evidence of record which can be deemed substantial. We do not attack Mr. Zelinski personally,—he is as fine a man as ever "scuttled a ship," but we do submit that his admitted unfamiliarity with Denver property values renders his testimony unsubstantial.

There is no justification for the proposed reweigh charge. From 79% to 83% of the trader transactions is shown by the evidence not to be subject to any such charge, yet the Examiner does not eliminate this from his computations. His estimates of future revenues from the proposed rates are therefore grossly overstated. We insist, apart from this, however, that no free service or free use of facilities is given the trader for any part of his business. The trader is admittedly an integral part of the buying outlet on this market and necessary to the producer. The marketing charge knowingly paid by the producer includes the cost, if any there be, incident to the absorption of his product. We insist that the proposed charge on trader operations stamps the rate schedule as discriminatory.

All of the matters raised by each and all of the exceptions are material and substantial. We have not attempted to summarize them all. We submit that they are all well taken. In the light of history and the known necessities for future rate protection, the allowance for Packer and Stockyards Administration expenses and for Interstate Commerce expense is far too low. The disallowance of approximately $1400. of traffic expense and of $2925. Dues and Donations (Exceptions XIV and XV) is not only not justified by the record but also is an unwarranted invasion of the rights of management. We repeat, the points raised by each exception are material. We maintain that the denial of these exceptions will result in confiscation of the property of the respondent.

In view of the importanceof the questions presented, respondent requests an oral hearing before the Secretary at some time convenient to him, upon reasonable notice in advance to respondent and its counsel.

Respectfully submitted,

ROBERT G. BOSWORTH.

PERSHING, NYE, BOSWORTH AND DICK,

Of Counsel.

Denver, Colorado.
December 2, 1936.

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EXHIBIT C

UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

SECRETARY OF AGRICULTURE v. DENVER UNION STOCK YARD COMPANY, Respondent.	B.A.I. DOCKET 450

FINDINGS, CONCLUSION AND ORDER.

(This document is Exhibit C, attached to Petition in Cause No. 10913 in the District Court of the United States for the District of Colorado, entitled "Denver Union Stock Yard Company vs. United States of America and the Secretary of Agriculture".)

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UNITED STATES OF AMERICA

Before the Secretary of Agriculture

BUREAU OF ANIMAL INDUSTRY

DOCKET NO. 450

SECRETARY OF AGRICULTURE vs. DENVER UNION STOCK YARD COMPANY, Respondent.	Findings, Conclusion, and Order.

I

PROCEEDINGS

1. This proceeding is a general inquiry under the Packers and Stockyards Act, 1921, as amended, into the lawfulness of the rates and charges of respondent for the stockyard services rendered by it at its stockyard at Denver, Colorado.

2. The proceeding was initiated by an order of inquiry and notice of hearing issued by the Acting Secretary of Agriculture on November 8, 1934. In said order and notice it was alleged that the respondent is engaged in the business of conducting and operating a stockyard at Denver, Colorado, which has been ascertained by the Secretary of Agriculture to be a "stockyard" within the definition thereof as used in Title III of the Packers and Stockyards Act, 1921, as amended, and which has been posted as such; that in accordance with the requirements of said Act respondent

had theretofore filed and put into effect schedules of rates and charges for its services as a stockyard owner; and that a proceeding under Title III of the Packers and Stockyards Act, 1921, as amended, should be had for the purpose of determining the reasonableness and lawfulness of said schedules of rates and charges. The charges for the various services of respondent are set out in Tariff No. 3, which became effective on July 6, 1931, to which ten supplements have been filed from time to time. The last of these was Supplement No. 10, which was filed to become effective on December 1, 1934.

3. It was ordered that a hearing be had for the purpose of determining the lawfulness of any and all rates and charges of respondent and of any rule, regulation or practice affecting said rates and charges, or whereby any stockyard service is rendered by respondent without making a lawful charge therefor. The order of inquiry and notice of hearing fixed the time and place of hearing and notice of the hearing was given to respondent by serving upon it a copy of said order and notice.

4. Pursuant to the aforesaid order and notice a hearing was held at Denver, Colorado, before an Examiner designated by the Secretary of Agriculture, beginning at 10:18 a. m., on June 3, 1935. The hearing was concluded at 3:00 p. m. on July 3, 1935. Respondent was present by counsel throughout the hearing. During the course of the hearing, oral testimony was taken which covered over 2300 pages of transcript. This, when reduced to narrative form, covered 1000 legal cap pages. There were introduced 118 exhibits, 68 by the Government and 50 by respondent, containing 4,000 pages, including more than 40 maps and photographs relative to respondent's property. A tentative order was served upon respondent and exceptions filed. Some of these were well founded. By direction of the Secretary of Agriculture, oral argument was had on January 7, 1937, before Assistant Secretary of Agriculture Harry L. Brown. A transcript of the oral argument was

made. At that time respondent asked and was given permission to file certain facts. These have been considered. Subsequently, respondent upon request furnished certain information. The case is now before me for decision.

5. At the outset of the hearing respondent's counsel objected to the proceeding and to the introduction of any evidence on the ground that the Packers and Stockyards Act of 1921 is an unwarranted delegation of legislative authority to the Secretary of Agriculture, contrary to the Constitution of the United States, and therefore void, in that it attempts to regulate the rates and charges for respondent's business, which is intra state business affecting interstate commerce only indirectly. The Examiner overruled the objection. The ruling is approved.

II

FINDINGS OF FACT

6. On the basis of the whole record, including the oral testimony of witnesses, exhibits, and official publications introduced in evidence, I make the following findings:

A. Location and General Description of Respondent's Property

7. The Denver Union Stock Yard is located within the City and County of Denver, Colorado, approximately three miles northeast of the center of the city. It is near paved highways which connect with good roads diverging in all directions. The stockyards is served on the east, west, and longitudinally through the center by railroad trackage facilities connecting with all trunk line railroads entering the city.

8. The stockyard area consists of several distinct divisions. The cattle division consists of a series of open pens, alleys, and appurtenances such as feed racks, water troughs, and yard offices or booths. This division is served on the east by the Chicago, Burlington & Quincy Railroad and the loading and unloading facilities known about the

yards as the Burlington dock, and on the west by the Union Pacific-Colorado & Southern joint tracks, and the loading and unloading facilities known as the Union Pacific docks. The cattle division extends from the southerly portion of the yards to a public street known as Race Court. It is a long, narrow strip equipped with pens and other facilities, most of which are not under cover.

9. The hog yarding facilities are in five hog barns and in portions of sheep barns Nos. 1 and 2, hereinafter described. Hog shed No. 1 was designed for receiving hogs trucked into the market, but it is used also for initial yarding of cattle and sheep received by truck. It is a one-story, open, frame shed adjoining the general truck-in loading and unloading facilities, and is generally referred to as the truck division. Its facilities consist of pens and adjacent service alleys, corn bunkers, and water troughs. The other hog sheds are of the same type of construction and in general have the same equipment as hog shed No. 1. These hog sheds are not, however, all of the same size.

10. The sheep yarding facilities are located on the first and second floors of sheep barns Nos. 1 and 2 and on the roof of barn No. 2. These facilities consist of pens and alleys in which sheep are yarded, reyarded, fed, watered, sold, and stored. The first floors, except that portion of barn No. 2 used for hogs are occupied principally by holding and storage pens and alleys. The principal commission sections are located on the second floors. Sheep barn No. 1 is a two-story, reinforced concrete structure covering an area of approximately 320 x 422 feet. The building has a saw-toothed roof and light wells. It is equipped also with concrete ramps or inclines leading to the second floor. Sheep barn No. 2 is a three-floor, reinforced concrete structure covering an area of approximately 254 x 420 feet.

11. Adequate facilities are provided for the handling of each class of livestock in its respective division. The general arrangement of the facilities is conducive to prompt and efficient handling of livestock. The facilities now avail-

able afford ample accommodation for the current flow of livestock through the yard.

12. Trunk line railroads serve the stockyard. Not all of these have trackage into the yard. Those which do not have arranged with those which do, or with the respondent, for the use of trackage into the yard. Railroad trackage serving the yard is owned by the Chicago, Burlington & Quincy Railroad, Colorado & Southern Railroad, Union Pacific Railroad, Northwestern Terminal Railway Company, and respondent. In accordance with contracts with respondent, the railroads entering Denver serve the yards and other industries in the district over the trackage and right-of-way owned by respondent.

B. Services and Facilities Furnished by Respondent and the Rates Charged Therefor

13. Respondent operates its stockyard at Denver, Colorado. On its premises is conducted a public market where producers and others may send their livestock, either by rail or by truck, to be sold to such buyers as may resort there to purchase livestock to meet their requirements. Any person complying with reasonable rules and regulations maintained by respondent may buy or sell livestock at its stockyards. Producers and others who ship their livestock to market for sale seldom sell it themselves. It is customary for them to employ the services of commission firms, which operate on the market and hold themselves out as salesmen of livestock on a commission basis.

14. Respondent provides the physical facilities on which the livestock market is conducted, and renders certain services in connection with livestock coming to the stockyard to be marketed, livestock shipped direct to packers, livestock stopped in transit and handled for the railroads, and livestock handled for traders. Some of the facilities of respondent are used in connection with receiving, marketing, feeding, watering, holding, delivery, shipment,

weighing, or handling of livestock at its stockyard. For these services respondent charges certain rates.

15. The transportation of livestock to the Denver market includes the unloading of it into suitable pens. The railroad companies, instead of constructing the necessary unloading facilities and doing the work in connection with unloading, employ respondent to perform this service for them. Respondent also loads onto cars that livestock which is shipped by rail away from the market. For this service respondent charges the railroads $1.00 per car. In addition to furnishing the services described above, respondent also provides facilities and renders services for the use and convenience of persons conducting private business or furnishing public service at the stockyard for their own compensation or profit. Respondent renders a number of other miscellaneous services such as dipping and spraying and dehorning.

16. Respondent assumes responsibility for driving livestock from the railroad chute pens to the sales pens assigned to respective consignees, and placing it therein. If the consignee is a person who has no regularly assigned pens, his livestock is placed in convenient holding pens where it awaits later disposition by the consignee. Livestock arriving by truck is unloaded at convenient docks provided by respondent in the hog division. Hogs so arriving are delivered by respondent to the sales pens of consignees in the drive-in division where they are usually fed, watered, and sold. Cattle and sheep arriving by truck are yarded in suitable pens in the truck division where they are delivered to consignees, who drive them to their pens in the divisions in which rail receipts are handled.

17. Appropriate records are prepared by respondent and made available to consignees. These records give information relative to the origin of shipments, names of consignors, number of head and kinds of livestock, and the

number of the pens in which it is yarded. Suitable watering facilities are maintained in the pens by respondent. Respondent furnishes all feed fed in the cattle, hog, and sheep divisions, and maintains certain storage facilities from which feed is distributed. It is optional with a commission firm or owner of livestock whether respondent shall put the hay on the platforms, on the fences, or distribute it in the mangers. Corn is distributed to bins at convenient locations in the hog yards, and the feeding operations are performed by respondent.

18. The commission firms assume responsibility for the livestock upon its delivery to them. They see to it that the livestock is watered and properly fed. When necessary, they sort and grade the livestock so as to show it to the best advantage to prospective buyers. After livestock has been sold, it is driven to the scales by the employees of consignee. Respondent provides the weighing facilities. The scale crew, which does the weighing, consists of a weighmaster, a gate man at the entrance to the scale platform, and a counter-off at the exit gate. The weighmaster enters the names of the owner, seller, and purchaser of the livestock on the scale ticket on which the weight is registered. As the livestock is driven from the scales, he enters on the scale ticket the number and kind of livestock. The counter-off keeps a record of each draft weighed and directs the yarding operations.

19. Respondent conducts the yard-cleaning operations in the cattle and sheep divisions. In the sale section of the hog division the cleaning is done by an independent operator under contract in consideration of the corn he salvages from refuse left in the pen. All other yard facilities are cleaned by respondent except when it permits purchasers to enter its yards and remove refuse. The Colorado Horse & Mule Company cleans the premises in which it operates, and disposes of the refuse for its own account.

20. For its services in driving the livestock from the unloading chutes to pens, counting, checking, and keeping a record of each consignment, the furnishing of water, the weighing, and the use of the physical facilities necessary in performing these services, respondent charges the owner or shipper of livestock brought to market the following rates known as *yardage charges:*

21. On livestock received and sold, including livestock resold through commission firms, that sold or contracted in the *country to* weigh and/or deliver at the stockyards, and that consigned direct to packers and slaughterers:

Cattle	$ .35	per head
Calves (Under 1 year old)	.25	" "
Hogs	.12	" "
Sheep or Goats	.08	" "
Horses or Mules	.35	" "
Pure Bred Bulls	1.00	" "

Besides these charges, which apply to all livestock except that hereafter noted, additional charges are made on livestock arriving by vehicles other than rail as follows:

Cattle	$ .05	per head
Calves (Under 1 year old)	.02	" "
Hogs	.02	" "
Sheep or Goats	.02	" "

With one exception the charges stated above are assessed only once upon an animal during the time it is in the yard, regardless of the time it remains there, or the number of changes of ownership which occur. On that livestock resold through commission firms, however, the regular rates are charged. When livestock is consigned to the Denver market, offered for sale, and forwarded unsold, respondent assesses no yardage charge. A considerable amount of these "through shipments" arrive at Denver and are stopped for feed, water, and rest. The services rendered by respondent in connection with these "through shipments" consist in unloading, feed and watering, and reloading the livestock as directed by the railroad company in whose custody the

stock is. The same classes of facilities are used for "through shipments" as for livestock consigned for sale at the market. The livestock is counted, yarded, fed, and watered. Inasmuch as no yardage charge is assessed against this class of business, the only revenues derived by respondent for handling it are the unloading and reloading charges and the profit on such feed as the animals in these "through shipments" consume.

22. The charges for feeding, bedding, etc., as set out in Supplement 10 to Tariff No. 3, are as follows:

Prairie hay or alfalfa (on fence)	$1.40	per cwt.
Prairie hay or alfalfa (fed out)	1.50	" "
Bedding straw	.65	per bale
Corn	1.50	per bushel measure

These charges are varied from time to time in accordance with fluctuations in the market price of feed. When livestock is fed or bedded or watered while in cars, a charge of $1.00 per deck is made in addition to the regular charge for feed or other material used. When empty stock or box cars are bedded with hay or straw, a charge of 50c per deck is made in addition to the charge for hay or straw used. On "through shipments" of hogs, ordered fed in car with feed furnished by shipper and already in car, a charge of $1.00 per car is made: A charge of $1.00 per car is made for livestock watered but not fed.

23. The barns and corrals composing the horse and mule division are operated by a commission company upon a consideration of a stated monthly rental of $200 and the payment of the regular yardage charge. Respondent reserves the right to use these premises whenever necessary, and does avail itself of this privilege during the stock show.

24. Practically all livestock is sold by weight and delivered to purchasers when driven off the scales. It is seldom practicable or convenient for purchasers to receive their livestock direct from the vendors and to remove the animals from the yards immediately after they are driven off the

scales. Respondent reyards such livestock in what is known as purchasers' holding pens or catch pens. The reyarding service is practically a duplication of the initial yarding services except for the fact that the bunches of livestock are smaller and more numerous. In most cases different pens and yarding facilities are used for reyarding that livestock bought by packers, traders, or by those who ship it from the market.

25. There is a separate division within the cattle division known as the "traders' division". No such separate trader division exists either in the hog division or in the sheep division. Cattle purchased by a dealer are driven, for the most part, by respondent to the traders' division. The physical characteristics of this division are substantially similar to those of the commission department. The services rendered by respondent with respect to livestock held in each do not differ materially. A large percentage of the cattle handled at the Denver market is of the stocker and feeder class, and is destined eventually to go to country feeders and growers. The dealer purchases numerous groups of animals and grades and sorts these into classes which he thinks will best meet the demands of buyers. Respondent makes no yardage charge for facilities and services furnished in the traders' division. The regular charge is made for feed in this division. Most of the livestock purchased by traders is resold by themselves, but occasionally traders move their livestock into the commission department and employ the services of a commission firm in making the sale. This process is known as "planting". Respondent collects the regular yardage charge on "planted" livestock.

26. If the purchaser of livestock be one who desires to ship it from the market, respondent drives it to pens convenient to the loading docks and holds it there until it is ready to be loaded out. Respondent performs the loading service for which it receives $1.00 per car from the carrier. No yardage charge is made to the purchaser for such livestock.

27. For convenience of operation the stockyard is

divided into divisions, and definite pens are assigned for the preferred use of commission firms and other individuals engaged in business at the market. Not all pens are so assigned. During periods of heavy runs, and as other circumstances may require, respondent may change an assignment to meet current needs of business.

28. As heretofore stated, the length of time during which an animal remains in the stockyard is not a factor in determining the amount of yardage charged. Inasmuch, however, as livestock consumes feed throughout its entire stay in the yard, the profit made on the sale of feed for such livestock tends in a degree to compensate for the time element.

29. The Exchange Building is an office building maintained by respondent for its own use and the use of those having their business locations at the market. Respondent's tariff does not set out the charges made by it for rent. Respondent's tariff sets out rates and charges covering such services as branding, dehorning, dipping, disinfecting, testing, immunizing, vaccinating, boarding horses, and special weighing. Exceptional services are rendered under special agreements. Minor items of income other than that from services hereinbefore mentioned are realized from activities for which no rates or charges are listed in the tariff.

C. Criterion of Reasonable Stockyard Rates

30. It is the law that all rates and charges made for any stockyard service furnished at a stockyard by a stockyard owner shall be just, reasonable, and non-discriminatory, and that any unjust, unreasonable, or discriminatory rate or charge is prohibited. Respondent is entitled to charge rates for the stockyard services rendered by it which are reasonable and non-discriminatory. Such a schedule of rates assesses charges equitably among the various users of its services. Respondent is entitled also to charge rates of such altitude that they will produce gross revenues enough to pay all reasonable operating expenses, including taxes

and an adequate amount to compensate it for the depreciation in its plant and equipment, and in addition a net operating income equal to a fair return upon the fair value of its property. In the application of this standard of reasonableness an analysis of the testimony has been made to determine the fair value of respondent's land and physical structures, an examination has been made of its operating expenses over a period of years and a fair rate of return has been determined.

D. Used and Useful Character of Respondent's Property

Land

General Statement:

31. The land owned by respondent is located some three miles northeast of the central portion of the City of Denver. The buildings, pens, chutes, scales, railroad tracks, and other facilities occupy portions of 130.57 acres of land lying along the South Platte River, most of it on the eastern side. At the date of the appraisal of the land respondent owned 131.045 acres, but between the date of the appraisal and that of the beginning of the hearing it sold .475 acre to Armour & Company under an option of long standing.

32. Within the immediate vicinity of respondent's stockyards and contiguous to its land are the plants of Swift & Company and Armour & Company. Somewhat more remote, but within easy access of the yards, are a number of the smaller packing plants, a rendering plant, and a number of other industries such as are usually found in and around a packing center. In the vicinity of respondent's plant and on land owned by it are some commercial feed lots. Not far removed from respondent's land are to be found retail stores, garages, an industrial district developed by a railroad, in which are mills, a by-products company, lumber yards, fuel yards, gasoline stations, and the like. In the neighborhood also are feed mills, elevators, iron foundries, and metal works.

33. The premises of the stockyard company are reached by means of improved public highways from all directions and are served within by a system of roadways built by the company on its own land or on leased land. Respondent's plant and facilities are amply served by railroads and by a system of railroad trackage of its own which runs through various sections of its yards.

34. The City of Denver is served by the Chicago, Burlington & Quincy Railroad, the Union Pacific Railroad, the Colorado & Southern Railway, the Denver & Salt Lake Railway, which leases the Northwestern Terminal Railway, the Denver & Rio Grande Western Railroad, the Chicago, Rock Island & Pacific Railroad, and the Atchison, Topeka & Santa Fe Railway. Respondent's land and facilities are a suitable place for conducting its business and for rendering a high type of service.

35. Preparatory to the appraisal of respondent's land it was divided by agreement into ten zones. All appraisers employed these zones in setting a value upon respondent's land, which is described more particularly by zones in the paragraphs which follow:

Zone 1: Description, area of used and useful and of non-used and useful portions.

36. The land on which the greater portion of the cattle commission division and the hog and sheep divisions have been constructed has been designated for purposes of appraisal as "Zone 1". This zone is made up of two parcels. One is triangular in shape and lies between the Union Pacific Railroad right-of-way on the west, and the Chicago, Burlington & Quincy right-of-way on the east; the other parcel is rectangular in shape and lies between the packing plants of Swift and Armour and is west of the Union Pacific Railroad right-of-way. This land is generally level and well situated for stockyard purposes.

37. At the time the land of respondent was appraised there were in Zone 1 38.534 acres, or 1,678,543 square feet.

Of the land sold to Armour & Company (see paragraph 31) .266 acre or 11,587 square feet were in this zone. On the land in this zone the greater portion of the physical facilities of respondent are located. Among the service units in the zone are the Exchange Building, the commission section of the cattle division, the hog barns, the sheep barns, the railroad chutes, the loading and unloading docks and pens, the general truck dock, the general alleys and passageways, hay barns, corn tanks, scales, immunizing facilities, roadways, the bulletin office commonly known as the chute house, an auto repair shop, a filling station, railroad tracks belonging to respondent, a few other minor service units, and several parcels of vacant land. The service units lying wholly within this zone occupy 1,126,261 square feet. Some of the facilities mentioned, such as pens and alleyways, extend over on to Zone 2. Of the facilities which are located on both zones those portions lying in Zone 1 occupy 488,158 square feet.

38. The question as to the used and useful character of the land in this zone arises with respect to certain parcels of vacant land; the land on which is located the garage and the auto repair shop and the filling station; that occupied by the unloading and loading facilities; and the land occupied by the railroad tracks belonging to respondent.

39. With respect to the vacant land, it is sufficient to state that in the construction of a plant of the character of that belonging to respondent it would be impracticable to construct physical facilities on every square foot of land owned by it. These small parcels of land may so lie with respect to the physical facilities that in due course service units may be constructed on some of them, while certain other parcels may be so situated that they will remain vacant. A consideration of these small parcels gives rise to the question of the used and useful character of small portions of land interspersed among the various service units. Interspersed land is so closely related to the other land and the physical facilities that no doubt arises as to its used and

useful character. Inasmuch as all the unoccupied parcels of land in Zone 1 are of this character, it is found that all the vacant land in Zone 1 is used and useful. The land on which is situated the garage, the auto repair shop, and the filling station is so situated with respect to the other facilities of respondent that it falls into the class of interspersed land. The land on which these units are located is found to be used and useful.

40. The unloading and loading facilities of respondent consist of unloading platforms, chutes into pens suitable for holding livestock temporarily, and sufficient alley space to give ingress and egress into and out of the holding pens and the land upon which these super-structures rest. There are four railroad docks in Zone 1. The Burlington dock occupies 55,452 square feet; the Union Pacific, 54,788 square feet; the Colorado & Southern docks, 27,026 square feet; and the river dock, 24,966 square feet. The railroad companies themselves do not unload and load the livestock handled by them. They employ respondent to do this and pay it $1.00 per car for each car loaded or unloaded. The railroad companies do not own livestock depot facilities of their own, but use the unloading and loading facilities of respondent. The Interstate Commerce Commission has decided that the service of unloading and loading livestock from and into cars is a common-carrier service subject to the provisions of the Interstate Commerce Act. (See I.C.C. Investigation and Suspension Docket No. 4109, page 342, of which judicial notice is here taken.)

> "We are of opinion and find that respondent in the performance of these unloading and loading services is a common carrier subject to the provisions of the Interstate Commerce Act and as such is required to file tariffs with us covering its charges for unloading and loading livestock at its public stockyards in Chicago."

The Supreme Court has ruled that the loading and unloading of livestock is a transportation service (295 U. S. 193). The Packers and Stockyards Act provides that nothing therein should affect the jurisdiction of the Inter-

state Commerce Commission or confer upon the Secretary of Agriculture concurrent jurisdiction over any matter within the jurisdiction of the Interstate Commerce Commission (Packers and Stockyards Act, 1921, Section 406). Inasmuch as the unloading and loading of livestock from and into cars is a railroad service, the charge therefor is for a railroad service and not a stockyard service. If an expense incident to loading and unloading of livestock from and into cars is passed to the shipping public through the assessment of railroad rates, it is obvious that it should not be passed on again as a stockyard expense covered in the stockyard rates. To include in respondent's used and useful property the land and facilities used by it in the unloading and loading of livestock and allow a return on the value of such land and facilities would be to compel the shipping public to pay as a stockyard expense an amount which it had already paid in the form of railroad rates. It is found, therefore, that the land on which are situated respondent's railroad unloading and loading facilities is not used and useful in the rendition of a service for which are charged rates, the reasonableness of which is being determined herein.

41. Respondent owns and keeps in repair a system of railroad trackage throughout the yards covering an area of about 5½ acres. The land in Zone 1 occupied by these railroad tracks covered an area of 58,124 square feet when respondent's land was appraised. Between that date and the date of the hearing respondent sold to Armour & Company a parcel of land, 11,587 square feet of which were in Zone 1, leaving 46,537 square feet in this zone occupied by railroad tracks at the date of hearing. These railroad tracks were constructed at the expense of respondent and are maintained and repaired by it. It leases its railroad tracks to various railroad companies under a contract according to which they pay respondent as rental 6% of an agreed valuation of $121,984.49. In addition the railroads reimburse respondent for maintenance, repairs, and taxes. The amount of taxes is determined by applying the cur-

rent local tax rates against an amount equal to one-half of the agreed valuation. The railroads use the tracks leased from respondent and the right-of-way to get to and from the unloading and loading docks owned by respondent and also to and from the various industries located in the packing district. If transportation does not cease until livestock shipped by rail is unloaded into suitable pens, as has been determined by the Supreme Court, transportation has not ended when livestock is being brought to those facilities over tracks owned by railroad companies or leased by them. It is found, therefore, that the land on which are located railroad tracks owned by respondent, but leased to the railroads, is not used and useful in the rendition of a service, the reasonableness of the rates for which is being determined herein. The land on which is situated the yardmaster's office is used in connection with the transporting by rail and the unloading and loading of livestock and is used for a transportation service. It is found also that the land occupied in Zone 1 by the *yardmaster's* office and *grounds* is not used and useful in the rendition of a service for which are charged rates, the reasonableness of which is being determined herein. It is found that all land in Zone 1 not specifically found to be not used and useful, is used and useful.

42. The following table sets forth the land in Zone 1 found to be used and useful in the rendition of services for which are charged rates, the reasonableness of which is determined herein and the land found to be not used and useful in the rendition of such services:

Used and Useful	Square Feet
Land on which are:	
General Truck Dock	8,540
Cattle Division-Commission Section	399,070
Hog Division-General Utility Section-Hog Barns 1, 2, & 3	42,062
Hog Division-General Utility Section-Sheep Barn # 2	11,513
Hog Div.-Commission Section Sheep Barn # 2	33,553

" Div.-Purch. Temp. Hold. Sec. Hog Barns 4 and 5	28,655
" " -Traders Sec. Sheep Barn # 1, 1st Floor	2,137
" " -Purch. Temp. Hold. Sec. Sheep Barn # 1, 1st Floor	18,613
" " -General Alleys	18,349
Sheep Div.-Gen. Util. Sec. 1st Floor Barns 1 & 2	142,110
" " -General Alleys, 1st Floor	26,363
" " -Entrance to Sheep Barn # 2	1,369
Hay Barn No. 2 and Scale	9,500
Corn Tank	1,250
Sheep Dipping Facilities	14,320
Hog Dipping Facilities	5,085
Hog Immunizing and Vaccinating Facilities	5,204
Cattle Inspection Chute and Pen 2,537	513
Cattle Scales, 2, 4, 5, 10 and 11	73,363
Hog Scales 3, 9, 13, 14	13,553
Sheep Scale No. 7	1,808
Stock Viaduct	1,093
Pedestrian Viaduct over Cattle Division	120
Armour & Co. Stock Drive	1,520
Livestock Subway	703
Truck Washing & Cleaning Facilities	1,160
R/W.N.E. of *Intersection* C.B.&Q. and U. P. R/W.	1,375
Exchange Building	50,845
Bulletin Office Building (Chute House)	16,622
Garage	11,171
Auto Repair Shop	1,582
Filling Station	2,859
Vacant Land South of Hay Barn No. 2	4,875
Vacant Land East of Cattle Pens 1,000 etc.	2,408
Vacant Land along West side Cattle Division	5,791
Cattle Div.-Commission Section)	
" " -Purch. Temp. Hold. Section)	
" " -General Utility Section)	488,158
" " -General Alleys)	
Armour & Co. Roadway	6,000
Total Used and Useful	1,453,212 Sq. Ft. or 33.360 Acres

Non-Used and Non-Useful	Square Feet
Land on which are:	
Yardmaster's Office and Grounds	4,975
Burlington Dock	55,452

Union Pacific Dock	54,788
Colorado and Southern Dock	27,026
River Dock	24,966
Railroad Right-of-way (Owned at date of hearing)	46,537
Total Non-Used and Non-Useful	213,744 Sq. Ft. or 4.907 Acres
Total land in Zone 1	1,666,956 Sq. Ft. or 38.267 Acres

Zone 2: Description, area of used and useful and of non-used and useful portions.

43. At the time the land of respondent was appraised Zone 2 contained 23.19 acres or 1,010,197 square feet. Between the date of appraisal and the date of the hearing 9,104 square feet of land lying in this zone was sold to Armour & Company. On Zone 2 are located the truck cattle-loading facilities, the tuberculosis pens in the cattle division, hay barns, some branding chutes, the cattle-dipping facilities, scales, manure dump frame, a large pen used at times for holding manure, the material yard, the shop and construction yard, roadways and lunch room, the truck-loading dock, some vacant land east of the manure dump and other vacant land adjacent to the Chicago, Burlington & Quincy right-of-way, portions of general alleys and pens, a roadway referred to as the Armour roadway, and railroad tracks belonging to respondent and used jointly by the railroads. This zone lies in the northern section of the yard just south of a street known as Race Court and between the Chicago, Burlington & Quincy right-of-way on the east, and Franklin Street, and the Northwestern Terminal Railway on the west. The only land in Zone 2 as to the used and useful character of which a doubt arises is the vacant land and the land on which are located the railroad tracks owned by respondent, and that occupied by a large pen known as No. 4212 in which manure is sometimes dumped.

44. With respect to the pen the evidence shows that, while it is used for purposes of dumping manure at certain seasons of the year, it is required and used at other seasons

in handling cattle arriving at the stockyard. Its use for manure-dumping purposes depends upon whether it is needed for yarding purposes. Whenever it is needed for yarding the manure is removed and livestock is yarded therein. The area of the land occupied by this pen is 34,661 square feet. The lunch room on this zone is let to an independent operator on a monthly basis. Its patrons are employees of the stockyard company, the commission firms and the traders, who operate in that section. The area occupied by this lunch room and the grounds which surround it is 1,952 square feet. If the lunch room were non-existent the land on which it is located would not be excluded from the used and useful land because of the fact that it is a small parcel interspersed with other used and useful land.

45. There are two vacant areas of considerable size in this zone. One is a parcel of 49,177 square feet lying east of the manure dump and hay barn No. 4 and its grounds; the other is a parcel of 35,675 square feet adjacent to the Chicago, Burlington & Quincy right-of-way and extending from the north end of the Burlington dock to the approach to the cattle truck chute. This land is east of and outside of the stockyard fences. The larger of these areas is so situated with respect to the hay barn and manure dump and sheds located in that section of the yard that it may be considered as an extension of the land used in connection with these. The smaller parcel serves as a clearance in connection with the operation of respondent's yard. These two parcels amounting together to approximately two acres of ground may be considered as interspersed land because of their use. Due to their use these two parcels should not be excluded from the used and useful land.

46. There was in Zone 2 at the date of the appraisal 45,669 square feet of railroad right-of-way belonging to respondent. In reconciling the area expressed in square feet and in acres, 213 square feet must be deducted from the 45,669 square feet, leaving 45,456 square feet. When 9,104 square feet, which is the portion of the Armour sale lying

in Zone 2, are deducted from 45,456 square feet, the remainder is 36,352 square feet, which is the railroad right-of-way lying in Zone 2. For reasons heretofore stated in those paragraphs wherein is discussed the used and useful character of the land on which are respondent's railroad tracks it is found that the 36,352 square feet occupied by respondent's railroad tracks are not used and useful in the rendition of services, the reasonableness of the rates for which is being determined herein. It is found that the remaining 964,741 square feet of Zone 2 are used and useful in the rendition of such services.

47. The following is a summary of the used and useful and the non-used and useful parcels of land in Zone 2:

Used and Useful	Square Feet
Land on which are:	
Truck Cattle-Loading Facilities	26,777
Cattle Division—T. B. Pens	11,709
Hay Barn No. 3 and scale	13,925
" " " 4	55,148
Branding Chutes 1-2-3, etc.	25,520
Cattle-Dipping Facilities	4,573
Cattle Scale No. 1	12,726
" " " 6	10,841
Manure Dump Frame, etc.	65,208
" " Pen 4212	34,661
Material Yard	9,200
Shop and Construction Yard	30,278
Roadway along Track No. 28	23,749
Roadway South of Hay Barn No. 4	7,800
Lunch Room and Grounds	1,952
Vacant Land East of Manure Dump	49,177
Vacant Land adjacent to C. B. & Q. R/W to Cattle Truck Loading Dock	35,675
Cattle Division-Traders Section)	
" " -Purch, Temp. Hold. Section)	
" " -General Utility Section)	528,472
" " -General Alleys.)	
Armour & Co. Roadway	17,350
Total Used and Useful	**964,741 Sq. Ft. or 22.147 Acres**

Non-Used and Non-Useful		Square Feet
Land on which are:		
Railroads belonging to respondent		
(After Armour Sale)	36,352 Sq. Ft. or .835 Acre	
Total land in Zone 2	1,001,093 Sq. Ft. or 22.982 Acres	

Zone 3:. Description, area of used and useful and of non-used and useful portions.

48. This zone is a parcel of land lying north of Race Court west of the Chicago, Burlington & Quincy right-of-way, and in a southerly direction from the Adams County line. It contains 863,574 square feet or 19.825 acres. Something over 5¼ acres in this zone have been leased by respondent to Swift & Company. This company several years ago constructed at its own expense pens, feed troughs, wells, water lines, sheds, platforms, and other equipment necessary in operating a feed lot. Some three years ago Swift & Company assigned its lease on this land to a private individual and at the same time leased to him its buildings and improvements. The plant is now privately operated by the lessee as a commercial feed lot. Another portion of Zone 3 has been leased by this same individual from respondent. He has constructed at his own expense pens and other facilities necessary in connection with the operation of a feed yard.

49. At the extreme west end of this zone is a small parcel of land containing 6,534 square feet, which respondent has deeded to the City and County of Denver for ingress and egress in connection with the improvements along the South Platte River. One of respondent's sewers empties into the river channel in this area. About 13½ acres of the zone are similar in character to the land in Zone 2 and are practically on the same level. The remainder, something over 6 acres, is somewhat broken and lies higher than the rest of the zone. This portion contains gravel. The land in this zone can be reached from the east by way of Race Court and from the west by way of Franklin Street.

It is accessible from the Burlington Railroad on the east and the Northwestern Terminal Railway on the west. There are in this zone also the Union Pacific tracks which belong to respondent.

50. The land in this tract other than that occupied by the commercial feed lots is vacant. Respondent claims that this land is used and useful. The witness called by the Government, for the purpose of describing the facilities of respondent and stating the use to which the various service units are put, described the major portion of this zone as being unused land for the most part. His exception was a small area in the northwesterly corner where miscellaneous debris is dumped and the northerly corner where the stockyards obtains gravel. That portion of this zone not occupied by the feed lots, the railroad right-of-way, and the gravel deposit is not designed or permanently set aside for the primary purpose of dumping and storing manure, notwithstanding the fact that small deposits of manure and debris are scattered thereon. The assistant general manager of the stockyards is of the opinion that some portions of this zone may have greater utilization in the future than they have now, but he is of the opinion that the purposes for which this land is now being used would bring it within the classification of used and useful land in the handling of livestock in commerce at the Denver stockyards without any further utilization. He is of the opinion further that if the land were not now owned by the stockyard company it would be necessary for it to purchase this zone. One of the land appraisers of respondent was of the opinion that the land is used and useful for purposes of expansion. In placing a value upon this zone this witness designated about 10,000 square feet or approximately ¼ acre in the river channel as practically worthless. It is on this portion that the city now has an easement in connection with the river improvement. According to an agreement with the city the street known as Race Court can be moved from its present location between Zone 1 and

Zone 2 to the northerly border of respondent's property along the Adams County line.

51. Portions of this land are used for the purposes of dumping refuse and manure and the procuring of sand and gravel by respondent. Portions of it, as has already been stated, have been leased to private individuals for the conducting of private feed yards. The testimony as to the present use to which some of this land is put warrants the conclusion that some of it should be found to be used and useful. If conditions develop in the future which require further expansion of the pen area this land will be available. The used and useful character of the railroad land owned by respondent has hereinbefore been discussed in connection with the land in Zone 1. It is found, therefore, that the 521,049 square feet of vacant land in Zone 3, the 6,534 square feet in the northwesterly corner, and 213 square feet necessary to bring into agreement the areas of Zones 2 and 3, when expressed in square feet and in acres, are used and useful. It is found also that the 325,493 square feet occupied by commercial feed lots and leased to a private party and the 10,285 square feet of railroad right-of-way are non-used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein. The number of square feet in Zone 3 found to be used and useful is 527,796. This is equivalent to 12.117 acres. The number of square feet found to be not used and useful is 335,778. This is equivalent to 7.708 acres, making the sum of these two areas expressed in acres 19.825.

52. The following summary gives the land found to be used and useful and that found not to be used and useful in Zone 3:

Used and Useful	Square Feet
Vacant Land in Tract No. 3B	521,049
Easement in northwesterly corner of Tract 3B	6,534
Adjustments necessary incident to decimal computations	213
	527,796 Sq. Ft. or 12.117 Acres

Non-Used and Useful	Square Feet
Commercial Feed Lots	325,493
Railroad right-of-way, Track No. 28-B	10,285

Total Non-Used and Useful 335,778 Sq. Ft. or 7.708 Acres

Total Used and Useful	527,796
Total Non-Used and Useful	335,778

Total Area of Zone No. 3 863,574 Sq. Ft. or 19.825 Acres

Zone 4: Description, area of used and useful and of non-used and useful portions.

53. Zone 4 contains 18.722 acres or 815,510 square feet. This zone is a long circular and irregularly shaped piece of land extending from Franklin Street on the north to the Colorado & Southern right-of-way on the south. The western boundary of the zone is the eastern bank of the South Platte River, and the easterly boundary is the property of Swift and Armour and that land of respondent in Zone 1 occupied by the hog barns and the sheep barns. In this zone are located hay barns, a material shed, a roadway, an easement along the South Platte River, a railroad right-of-way, and a trackman's tool house. In addition to the land on which are located these service units, there are four separately described parcels of practically vacant land.

54. One of these parcels is south of the old Blayney-Murphy property and north of land owned by Swift & Company. In this parcel there are 177,739 square feet. Underneath this land there is a 21-inch sewer pipe extending from the cattle division across the stockyard railroad tracks, the Chicago, Burlington & Quincy right-of-way, and across other land now owned by respondent. There is also a 30-inch sewer pipe underneath this land which serves Armour & Company and receives also drainage from the cattle division thru a 12-inch sewer crossing the stockyard railroad tracks, the Union Pacific right-of-way, and passing through the Armour packing plant. Another sewer 18 inches in diameter extends from Armour & Company's

plant to the river. Underneath this land is a 12-inch water pipe which extends from a well to the Armour & Company plant.

55. Another parcel of vacant land contains 64,030 square feet. This parcel of land lies between the vacant land just described and the embankment constructed when the channel of the South Platte River was straightened. This land was formerly a part of the river bed. It, too, is traversed by sewers which serve Armour & Company's packing plant directly and the stockyards indirectly, and by an extension to the cattle division. Another parcel of this vacant land lies in the south portion of the yards and borders on the Colorado & Southern right-of-way. It is triangular in shape and lies between a strip of land owned by Swift & Company and the easement along the South Platte River. The area of this parcel is 136,178 square feet. A sewer underneath this land leads from Swift & Company's plant into the South Platte River. The rest of the land is filled and is in varying conditions of level. A fourth parcel used mainly by the employees of Swift & Company for parking purposes contains 63,318 square feet of land.

56. The railroad tracks belonging to respondent occupy in this zone a right-of-way of 127,544 square feet.

57. Between the parcels of vacant land heretofore described and the South Platte River, there is a 50-foot easement along the bank of the river. That portion of the easement which is in this zone contains 132,718 square feet. In this zone is an unimproved and winding roadway. This road is not a public thoroughfare, although it is very generally used, particularly by those industries which operate in that vicinity, and by the city in connection with repairs and work done on the South Platte River improvement. It furnishes an approach for fire apparatus to the structures and buildings of respondent and the other industries in that locality.

58. Respondent claims that all the land in this zone is used and useful. The witness called by the Government to describe respondent's facilities gave a detailed account of the use which is presently being made of this land. This zone furnishes a sewer outlet to respondent and others. Certain portions of the vacant land, particularly that lying toward the southern end of the yards, can be developed into a parking space for trucks. It is possible that pens for yarding livestock might be constructed on certain portions, but in view of the fact that the yards have expanded in a northerly direction it is not probable that the land will be so used at any time in the near future. In view of these facts, it does not seem reasonable to carry into the rate base the value of all the vacant land in this zone. Yet it is not practicable to determine just how much surface area is needed in connection with the structures which lie underneath this zone.

Some allowance should be made for the reason that access to sub-structures is necessary. It is not practicable, however, to determine mathematically the number of square feet which should be allowed for this purpose. It seems reasonable and just to include one-half of all the vacant land in this zone as used and useful, and it is so found. It is found that the land occupied by respondent's railroad tracks and the trackman's tool house is not used and useful. It is further found that the land occupied by the hay barns, the material shed, the roadway, and the easement along the South Platte River is used and useful. A summary of the land found to be used and useful and that found not to be used and useful is as follows:

Used and Useful	Square Feet
Land on which are:	
Hay Barn No. 5 and Scale	19,158
Hay Barn No. 6	40,750
Material Shed West of Hay Barn No. 6	5,148
Roadway (Swift & Co.)	3,956
Roadway	5,475

Roadway.	39,305
½ Vacant Land North and West of Track No. 27	88,869.5
½ Vacant Land in Tract No. 10	68,089
½ Vacant Land in Tract No. 6	32,015
½ Vacant Land in Tract No. 1	31,659
Easement along Platte River	132,718

Total Used and Useful 467,142.5 Sq. Ft. or 10.725 Acres

Non-Used and Useful	Square Feet
Land on which are:	
Trackman's Tool House	191
Railroad right-of-way	127,544
½ Vacant Land North and West of Track No. 27	88,869.5
½ Vacant Land in Tract No. 10	68,089
½ Vacant Land in Tract No. 6	32,015
½ Vacant Land in Tract No. 1	31,659

Total Non-Used and Useful 348,367.5 Sq. Ft. or 7.997 Acres

Total Used and Useful	467,142.5
Total Non-Used and Useful	348,367.5

Total area Zone No. 4 815,510 Sq. Ft. or 18.722 Acres

Zone 5: Description.

59. This zone consists of a body of land containing 550,598 square feet of which 511,394 square feet are vacant and 39,204 square feet are an easement 50 feet wide along the bank of the South Platte River. The total area of this zone expressed in acres is 12.64. The land in this zone is no longer subject to overflow during periods of flood. The land is not now being used and any plans that may have been proposed at the time of the previous hearing looking toward the erection of pens or other improvements on this area have not been carried out. This land lies on the west bank of the South Platte River and across that river from the main body of respondent's property. There is no approach across the river between the main body of the stockyards and the vacant land on the west side of the river. Respondent claims that this land is used and useful and that it is

being held as land for expansion. Zone 4, a part of which is vacant, lies between the main body of the stockyards and the river and the river separates Zones 4 and 5. The growth of the yards has not been in the direction of Zone 5, but in a northerly direction toward Zone 3, the vacant lands in which are included as used and useful.

60. The easement along the river in this zone does not serve any facilities now operated by the respondent. It is found, therefore, that all the land in Zone 5 is not used and useful for any service, the reasonableness of the rates for which is being determined herein. The area and detailed description of Zone 5 is as follows: Zone 5 contains 12.640 acres of land.

Non-Used and Useful	Square Feet
Vacant land in Tract No. 2—West of River contains 550,598 sq. ft. However, there is an easement to the City and County of Denver, described as follows: "Parcel 2-C—0.90 acres (39,204 sq. ft.) located on Tract 2-A west of the river". Therefore, 550,598 sq. ft. less 39,204 sq. ft. equals:	511,394
Easement	39,204
Total	550,598 Sq. Ft. or 12.64 Acres

Zone 6: Description, area of used and useful and of non-used and useful portions.

61. Zone 6 is a 3.383-acre irregularly shaped area of land lying in the southerly portion of respondent's property. It lies between 46th Avenue on the south, the Colorado & Southern right-of-way on the north, the Chicago, Burlington & Quincy right-of-way on the east, and land owned now by the Pepper Packing Company. The area of this zone in square feet is 147,343. Of this area 133,905 square feet are vacant and not used except as a general city dump in which are found tin cans, automobile bodies, and general refuse. Much of this portion of the land lies below the grade level of adjacent land. In this zone also

there are the railroad tracks commonly known as the Chicago, Burlington & Quincy tracks, which belong to respondent. These tracks occupy 3,245 square feet. A roadway leads from 46th Avenue into the stockyards and to the Swift and Armour plants. This road is surfaced with asphalt or material of similar character and provides means of ingress and egress to and from respondent's premises and to the packing plants. The road in this zone is a portion of a roadway extending from 46th Avenue on the south to Franklin Street on the north and is used in common in the interests of respondent, Swift & Company, and Armour and Company. This roadway occupies 10,193 square feet in Zone 6.

62. Respondent contends that the whole of Zone 6 is used and useful. Respondent's assistant general manager states that this zone is being filled as rapidly as filling is available and that it is the plan of respondent to use this zone for parking empty trucks and for the storage of loaded trucks when truck arrivals come faster than they can be cared for. He states further that the City of Denver and the Chicago, Burlington & Quincy Railroad are now proposing to put a subway under the Burlington right-of-way on 46th Street and to close the road running along the Colorado & Southern right-of-way south of Zone 9 and that when this road is closed respondent will require a much wider approach and a wider road in Zone 6 than at present. A subway built under the Chicago, Burlington & Quincy tracks will be lower than the average level of Zone 6 and for this reason he claims the roadway in Zone 6 will have to have a turning radius as well as an incline and that a roadway will be required wider than that across Zone 6, which now connects the yards with 46th Avenue. This witness also states that respondent is now using by sufferance a portion of the Chicago, Burlington & Quincy right-of-way between the Exchange Building and the Colorado & Southern tracks as a road and that this roadway can be closed on short notice and undoubtedly will be closed when

the proposed subway is built unless other arrangements are made. He states that respondent's roads are narrow and that its location is such that it cannot permit long lines of trucks to extend over railroad tracks and on 46th Avenue for the reason that this would congest traffic and slow up all movements. He states that as the truck business grows respondent will be compelled to use all of Zone 6 for the parking of empty trucks or for the storage of loaded trucks, particularly when the new hog lay-out is built.

63. One of the witnesses who appraised respondent's land was of the opinion that Zone 6 is required for future railroad switching facilities. A witness called by the Government, who had made a careful analysis and given a minute discription of the service units of respondent, was of the opinion that the railroad tracks in this zone are reasonably necessary in the course of commerce whereby livestock passes from the place of production or shipment to, from, or through the stockyards, to the place of its ultimate destination. This same witness was of the opinion that the roadway located in tract 6, commonly known as the Swift roadway, should be similarly classified.

64. For reasons already stated in discussing the used and useful character of the railroad land in Zone 1, the 3,245 square feet occupied by the railroad tracks in Zone 6 are found to be not used and useful in the rendition of any services, the reasonableness of the rates for which is being determined herein. The evidence shows that by far the greater portion of the land in Zone 6 is hardly more than a dump. One of the witnesses who appraised respondent's land looked upon Zone 6 as land for expansion in the extension of railroad facilities. If he were correct in his assumption that the land is being held for this purpose it would be found not to be used and useful for reasons heretofore set forth. Respondent's assistant general manager states that this land is being held in reserve largely as a parking lot for livestock trucks either before or after their unloading. He states that the land is gradually being

filled, but does not state the rate at which it is being filled or any date in the near future on which this land may be expected to be put to any use. The prospective use to which it may be put is, according to this witness, contingent somewhat upon the expansion of the hog facilities. Sufficient vacant land has already been included in Zone 4, which lies nearer respondent's main yarding area, to provide truck parking space for many years to come. The testimony with respect to the character of this land and with respect to its potential use and with respect to the date when it may be expected to come into use does not warrant including it in the used and useful land. It is found that the 133,905 square feet of vacant land in this zone are not used and useful in rendering any services, the reasonableness of the rates for which is determined herein.

65. The evidence cited above indicates that the roadway in Zone 6 is a portion of a private roadway leading through the yards and used in common by the various industries located near it. That portion of the roadway lying in this zone, while furnishing ingress and egress to Swift & Company, would be necessary in the operation of the stockyards even if it were not used by Swift, Armour, and others. The assistant general manager of the respondent states that a wider roadway will be necessary if a subway is built under the Chicago-Burlington right-of-way on 46th Avenue. No definite statement is made as to when such an underpass may be expected to be built. It is stated that the city and the Chicago, Burlington & Quincy are now proposing to put a subway under the Burlington right-of-way. No date is indicated as to when this improvement may be expected to be made. Whether and when this improvement will be made are matters of speculation. The probabilities of the need of a wider roadway than that now on Zone 6 are too remote to justify the allowance of an increased area for that purpose and the inclusion of the value thereof in the rate base for determining the rates for services, the reasonableness of which is being determined herein. As stated above, respondent needs a roadway

through Zone 6 for ingress and egress. It is, therefore, found that the 10,193 square feet, the area now occupied by *the roadway crossing this zone,* are used and useful in the rendition of the services, the reasonableness of the rates for which is being determined in this order. The following is a summary of the land in Zone 6 found to be used and useful and that found not to be used and useful:

Used and Useful	Square Feet
Land on which are:	
Roadway	10,193 Sq. Ft. or .235 Acre
Non-Used and Useful	
Land on which are:	
Railroad right-of-way	3,245
Vacant Land	133,905
	137,150 Sq. Ft. or 3.148 Acres
Total Used and Useful	10,193
Total Non-Used and Useful	137,150
Total Area of Zone No. 6	147,343 Sq. Ft. or 3.383 Acres

Zone 7: Description.

66. Zone 7 contains 200,724 square feet or 4.608 acres. The land in this zone is vacant. There is a 50-foot strip along the South Platte River which is a part of the easement granted to the city by respondent. This zone is triangular in shape. It is bounded by 46th Avenue, the Chicago, Burlington & Quincy right-of-way, and the South Platte River, along which is the easement. The surface of the zone is considerably below the river embankment and the adjacent railroad tracks. The total area of the easement in this zone is 34,412 square feet or .79 acre. This zone lies across the Colorado & Southern Railroad, is south of Zone 6 and across 46th Avenue. It is the extreme southern portion of respondent's land and is vacant and unused.

As already pointed out the physical facilities of respondent are being extended in a northerly rather than in a southerly direction and there is no likelihood that pens or other stockyard facilities required by respondent will be constructed on this land at any time within the predictable future. Respondent claims that the land is being held for purposes of expansion. It is found that the 200,724 square feet or 4.608 acres are not used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein.

Zone 8: Description.

67. Zone 8 contains 33,062 square feet or .759 acre of land. This land is occupied by the truck manure dump under which runs a sewer belonging to the Union Pacific Railroad Company. This easement is a strip 6 feet wide. This zone is located in a triangle bordered by 46th Avenue, the Chicago, Burlington & Quincy right-of-way, and the Colorado & Southern right-of-way. The area in this zone is used by truckers for dumping manure from their trucks preparatory to taking on return loads of materials and commodities which they carry back with them to the country. These premises are furnished free of charge for truckers who do not choose to avail themselves of the cleaning and washing facilities adjacent to the truck chutes. It is found that the entire area in this zone, namely, 33,062 square feet or .759 acre, is used and useful in the rendition of services, the reasonableness of the rates for which is being determined in this order.

Zone 9: Description, area of used and useful and of non-used and useful portions.

68. Zone 9 contains 308,448 square feet or 7.081 acres of land. The land in this zone is occupied by the horse and mule division, operated by the Colorado Horse & Mule Company and the stock show facilities of the Western Stock Show Association, a voluntary organization of various per-

sons and businesses interested in the livestock industry. The horse and mule division consists of horse and mule barns, corrals, try-out lots, approaches and entrances, a blacksmith shop, roadways, and other smaller units. The Horse and Mule Company pays for the use of these facilities a rental of $1200 a year and 35c per head for each horse and mule sold in the division. The Horse and Mule Company furnishes its own light and water for the barns and sheds and half the water for its offices. The Horse and Mule Company vacates its premises when they are needed in connection with the exhibitions of the Western Stock Show Association. The horse and mule division is operated in most respects as other portions of respondent's property which is devoted to rendering stockyard services. Such differences as exist for the most part can be accounted for by the difference in character between horses and mules, which are handled in this division, and other species of livestock handled elsewhere in the yard. There is nothing in the record which would justify the exclusion of respondent's land devoted to the horse and mule division from the used and useful land used in the rendition of services for which are charged rates, the reasonableness of which is determined herein. The situation with respect to that portion of respondent's land in Zone 9 devoted to stock-show purposes is not so clear. The association which operates the show is a non-profit corporation without shares of stock. It pays no dividend. Memberships in the association were sold originally as a clever way of getting money for the show and relieving the yard company of that expense. The livestock pavilion was built under the direction of the association which went down town and secured donations from various people for the building of this barn or sales pavilion, which respondent otherwise could not have built. (See agreed abstract p. 694 and 695.) The show association has had revenues left over in certain years after paying rent. With these revenues they built a tile barn. Some years later respondent paid a deficit of $2,000 or $3,000 and took title to the barn because no rent had been paid

in the past. Respondent feels that the sales pavilion belongs to it and it feels the same way about the tile barn. At various times it has absorbed deficits of the association. The evidence shows that the livestock show which is held in January tends to bring livestock to market during this month, which intervenes between two fairly heavy shipping seasons. It is claimed by respondent that the show tends to increase its receipts of livestock throughout the year. There is evidence to the effect that the livestock show has had a tendency to improve the quality of livestock in the Denver territory and that the auction sales promoted by the show bring to Denver, buyers from wide sections of the country. There is testimony also to the effect that the prices received from livestock during the show week are from $1.00 to $1.50 per hundred higher than they are at other seasons of the year.

69. Not only are the facilities in Zone 9 used in connection with the stock show, but also some 200 pens in the south end of the yard are used for handling bulls. Other pens north of the Exchange Building are used for the holding of fat cattle. Feeder cattle, of which there are usually over 100 loads entered in the show, are yarded north of the fat cattle up to about the alley which is numbered 22. The facilities so used are on land already found to be used and useful. Regular yardage is charged on the livestock yarded in the main division of the yards and the revenues go into those of respondent. The yardage charges on animals sold on the show property in Zone 9 accrue to the show association.

70. There is no doubt but that the stock show has increased the interest of stock growers in producing a better quality of livestock. The question of the wisdom of the livestock show cannot be doubted, but this is beside the point. The matter to be determined is whether or not respondent, who is a zealous member of the stock show association (which assesses entrance fees, grants concessions for a consideration, and solicits contributions from

various Denver businesses) should absorb deficits which occur in connection with the show and pass those deficits on to all those who *use the regular facilities of the yards.* While the character of the business conducted by respondent naturally causes it to be interested in the stock show, there seems to be no reason why it should be more zealous than certain other industries in the stockyard section. Respondent's officers render certain services to the Stock Show Association, some of its employees keep the Association's books, and others do certain work during the progress of the show. The expense incident to this work has been allowed to remain in respondent's stockyard expense account. The stock show is a community enterprise. In such an enterprise respondent may be expected to have a keen interest and to make a reasonable contribution towards its success. That it does make such a contribution in the form of services rendered without compensation is amply supported by the evidence. The expenses incident to such services automatically go into the rates paid by the general shipping public. But to assume that it is the responsibility of respondent to underwrite all deficits incurred by the Stock Show Association and to pass these on to shippers in the form of regular stockyard rates is to pass on to the public in rates an amount which in justice it ought not to pay. Moreover, to assume that the activities of the Stock Show Association are a stockyard service and to include the value of the Association's property in the rate base necessitates that the Secretary of Agriculture assume responsibility for determining the reasonableness of the general entrance fees, the price of reserved seat tickets, the charges made for concessions during show week, and the rentals for various activities held occasionally throughout the year. I cannot believe that Congress intended that regulation under the Packers and Stockyards Act should extend so far.

71. The area in Zone 9 devoted to the horse and mule division is 193,750 square feet. It is found that this num-

ber of square feet in Zone 9 is used and useful in the rendition of services, the reasonableness of the rates for which is being determined herein. The total number of square feet in Zone 9 devoted to stock show purposes is 114,698. It is found that this number of square feet is not used and useful in the rendition of services for which are charged rates, the reasonableness of which is being determined herein. The following summary gives the land found to be used and useful and that found not to be used and useful in Zone 9:

Used and Useful	Square Feet
Land on which are:	
Horse and Mule Division—Barn No. 1	13,184
" " " " — " " 1 A	640
" " " " — " " 2	5,248
" " " " —Try-out Lot	17,653
" " " " —Barn No. 3	7,967
" " " " — " " 4	23,184
" " " " —Corral West of Barn No. 3	11,216
" " " " — " East " " No. 3	5,046
" " " " —Approach to Barns 3 and 4	9,199
" " " " —Lafayette Street Entrance	2,187
" " " " —Barn No. 5	12,084
" " " " — " " 6	14,416
" " " " — " " 7	12,000
" " " " —Corrals	9,400
" " " " —H and M Truck Chute	60
" " " " —Company Horse Barn	17,310
" " " " —Blacksmith Shop	3,920
Hook-up Shed	5,780
Run-over Shed	1,357
Hook-up Shed Pen	12,207
Entrance to Hook-up Shed Pen	2,096
Roadway N. E. Corner of Intersection C. B. & Q. & C. & S. R/W	7,596
Total Used and Useful — Sq. Ft.	193,750
or Acres	4.448

Non-Used and Useful		Square Feet
Land on which are:		
Club and Store Building		4,927
Stadium		77,850
Sales Pavilion		5,765
Stadium Heating Plant		1,775
Stock Show Restaurant		4,250
Stock Show Hog Barn		17,606
Stock Show Wash House		2,525
Total Non-Used and Useful	Sq. Ft.	114,698
	or Acres	2.633
Total Used and Useful		193,750
Total Non-Used and Useful		114,698
	Sq. Ft.	308,448
	or Acres	7.081

Zone 10: Description.

72. This zone is separated from the other land owned by respondents by the main lines and switch tracks of the Chicago, Burlington & Quincy Railroad and County Road No. 83. It is the site of an abandoned gravel pit and is entirely vacant except for a hamburger stand operated by a squatter. The land is very irregular as a result of gravel excavation by its former owner, the Brannan Sand & Gravel Company. A land witness called for respondent testified that he placed a lower value on this land than he did when he testified at a former hearing and that at that time he and other witnesses attributed more value to the gravel than they did to the land. The witness is of the opinion that if he were to take a buyer out to see it the buyer would probably consider it worthless. He stated, however, that this land brought good value as a gravel pit and that it will bring a value for a dump heap when the city no longer has a place to dump refuse. Respondent claims that this land is used and useful for expansion. A witness called by the Government, who is familiar with respondent's property and operations, is of the opinion that this land is not used and useful.

73. The location and character of this land are such that it is unsuited to any general stockyard purpose at the

present time. It is so irregular in surface that great expense in leveling would be required even if there were a stockyard use to which respondent would put the land. It is isolated and lies across a road and a railroad track from the main body of the yards. It is in reality a wasting asset. Its potentiality as a source of gravel is already being exhausted. With a sufficient amount of vacant land already included in other zones to satisfy the requirements of respondent's growth for many years it does not seem fair to shippers to include this zone in the used and useful land of respondent when the character and time of the use are so problematical and so speculative. It is, therefore, found that the 100,319 square feet or 2.303 acres of land in this zone are not used and useful in the rendition of any service, the reasonableness of the rates for which is being determined herein.

74. A summary of land heretofore found to be used and useful and that found to be not used and useful is as follows:

Used and Useful	Acres	Square Feet
Zone No. 1	33.360	1,453,212
" " 2	22.147	964,741
" " 3	12.117	527,796
" " 4	10.725	467,142.5
" " 5	....	....
" " 6	0.235	10,193
" " 7	....	....
" " 8	0.759	33,062
" " 9	4.448	193,750
" " 10	....	....
Total Used and Useful	83.791	3,649,896.5 Sq.Ft. or 83.791 Acres

Non-Used and Useful	Acres	Square Feet
Zone No. 1	4.907	213,744
" " 2	.835	36,352
" " 3	7.708	335,778
" " 4	7.997	348,367.5
" " 5	12.640.	550,598
" " 6	3.148	137,150
" " 7	4.608	200,724

" " 8	....	....
" " 9	2.633	114,698
" " 10	2.303	100,319
Total Non-Used and Useful	46.779	2,037,730.5 Sq.Ft.or 46.779
Total Used and Useful		3,649,896.5
Total Non-Used and Useful		2,037,730.5
Total Area		5,687,627 Sq.Ft.or 130.570 Acres

STRUCTURES

General statement and findings:

75. The structures located on the land hereinbefore found to be used and useful are used by respondent inseparably with the land in rendering those services, the reasonableness of the rates for which is being determined in this order. It is found that all structures located on land herein found to be used and useful are themselves used and useful in the rendition of services, the reasonableness of the rates for which is determined herein, and that all structures located on land found not to be used and useful are not used and useful.

E. VALUATION OF RESPONDENT'S PROPERTY

VALUE OF USED AND USEFUL LAND AND VALUE OF NON-USED AND USEFUL LAND

General statement:

76. Four witnesses testified as to the value of respondent's land. Three of them were called by respondent and one by the Government. The witnesses, Barclay Ivins, Harry W. Newcomb, and L. F. Eppich, who were called by respondent served as an appraisal committee and submitted to respondent a joint report in which is set forth their opinion as to the value of respondent's land. This joint report is in evidence. The witness, John A. Zelinski, called

by the Government also prepared a report setting forth his opinion as to the value of respondent's land. This report is in evidence. All four witnesses testified at the hearing, and were examined and cross-examined as to the factors which they considered in arriving at the respective values which they placed upon respondent's land. All the witnesses were men of long experience and unquestioned standing. The three called by respondent are all engaged in the real-estate business in Denver and have been for periods varying from 24 to 38 years. They are all members of the Denver Real Estate Exchange. The witness, Ivins, has served as a member of and as chairman of the Business and Industrial Property Appraisal Committee. He has managed important business blocks in the retail business district in the center of Denver and properties located in the financial district. He has also handled trackage and industrial properties.

77. The witness, Newcomb, called by respondent is president of a company which conducts in Denver a general real-estate business. He has had experience in the appraisal of land for local utilities, railroads, banks, industries, and other businesses. The witness, Eppich, called by respondent has been engaged in the real-estate business in Denver for nearly 40 years and has had much experience in appraising property in and around Denver. He is the loan correspondent and appraiser for two large life-insurance companies in New York and for one in North Carolina. He has had experience in appraising real estate in San Francisco, Los Angeles, and elsewhere. For a time he was chairman of the Zoning Commission of the City of Denver and is a member of the Board of Adjustments. For nine years he has been a member of the committee of the Denver Planning Commission.

78. The witness, Zelinski, called by the Government is a civil engineer whose training was had at Ohio State University. His practical experience began while in high school and

continued throughout his formal professional training. He has had engineering experience and has done consulting work in connection with sewer and water construction disposal plants, garbage reduction plants, and for some time was a member of an engineering firm with offices at Painesville, Ohio. In 1916 he entered the service of the Interstate Commerce Commission as junior land appraiser and served in that capacity until the fall of 1917. After an interval of some three years he returned to the Interstate Commerce Commission with an assignment in the Land Appraisal Department. He held all positions in this department from junior land appraiser to assistant supervisor of land appraisals, in which capacity he served until early in 1928, when he became Assistant Director of Research for the National Association of Owners of Railroad and Public Utility Securities. In the fall of 1929 he opened an office in Washington as consultant on railroad and utility regulation. In 1934 he became principal valuation engineer of the Packers and Stockyards Division, Bureau of Animal Industry, in the Department of Agriculture. In connection with his work in the Department of Agriculture he has given testimony in rate cases held for purposes of determining the reasonableness of stockyard rates for the Union Stock Yards Company of Omaha, the St. Joseph Stock Yards Company, and the Sioux City Stock Yards Company. This work was done under contract during the time he was engaged in private practice. He has made appraisals of the stockyards properties at Cleveland and Wichita as an employee of the Department. In those stockyard-rate cases in which he appeared as a witness his testimony was confined to the valuation of land.

79. The witnesses called by respondent placed a value of $1,645,552.50 upon the 131.045 acres of land owned by respondent at the time the appraisals were made. The witness called by the Government placed a value of $728,284 upon the same land. The value placed upon this land by

witnesses called by respondent is more than twice as great as that placed upon it by the witness called by the Government. The witnesses called by respondent placed a value upon it greater by $917,268.50 than did the witness called by the Government. This discrepancy is too great to be accounted for solely by the difference in opinions which is reasonably to be expected between well qualified and competent land experts. It becomes necessary, therefore, to examine the methods followed by the various witnesses and the factors influencing them in arriving at their respective values.

80. The methods followed by the witnesses are set forth in their reports and in their oral testimony. In the land report comprising the appraisal of respondent's land the witnesses called by respondent stated jointly that, in arriving at the values which they placed on the various zones and the total value which they placed upon all the land, they personally inspected all the lands of the company giving consideration to their proximity to related and other industries and to various features having a bearing upon their adaptability and desirability for industrial uses, including that for a stockyards company; that they compiled a list of sales of properties in the neighborhood of the stockyards, and personally inspected the properties, checking, in so far as they deemed it necessary, with the grantors and grantees the consideration involved and that thereupon they appraised each zone placing what they considered a conservative value upon it; that in arriving at the value of the land they gave weight to the fact of the location of the yards and their convenient accessibility to the business district of Denver over paved streets; to the fact that the topography of the land is such as to lend itself to industrial development including stockyard uses, and to the fact that the land of respondent has available street-car and bus service into the City of Denver and bus service to all parts of Colorado and adjoining states; to the fact that six railroads with their connections furnish excellent transportation

facilities for livestock and products of the packing houses; to the fact that truck lines radiating from Denver supplement the railroads and serve rich irrigation districts in Colorado; to the fact that respondent's land is favorably located as regards dependable labor supply within easy walking distance and that there are good schools, churches, playgrounds, and a branch library accessible; to the fact that the facilities located on respondent's land have ample fire protection; to the fact that the district in which respondent's land is situated is the only part of Denver zoned for a business such as that conducted by respondent; to the fact that there are located in the district some fifteen allied industries such as packing houses, rendering companies, serum plants, and that there are other non-allied industries in the district; to the fact that there are sugar factories north of Denver, the by-products of which can be used in feeding cattle and sheep; and finally that the City of Denver is growing. In addition to this general statement each of the witnesses called by respondent testified orally as to the factors which led him to his conclusion as to the value of respondent's land.

81. The witness called by the Government likewise made a general statement with respect to respondent's land and included in that statement those elements which he considered in arriving at the value which he placed upon each of the ten zones into which the land was divided for purposes of appraisal. This witness began his investigation of the value of respondent's land sometime in November 1934. He received a transcript of a record in a prior hearing and copies of the exhibits introduced. He obtained from the Interstate Commerce Commission such information as it had on railroad valuations in Denver and had access to the Commission's records in Denver. He went to Denver on January 7 and left the 8th of February, dividing his activities between the land work and the supervision of the engineering and the inspection of the property of both phases of the work. He gave consideration to the topography, size, shape, and location of respondent's land with

respect to highways, railroad trackage, and to certain centers of value or development in that portion of the city in which the property is located. He also took into consideration the general nature of the surrounding development and the use to which the surrounding property is devoted, the improvements in the community such as schools, churches, and fire protection. He considered also the fact that the property of respondent is favorably situated with respect to street cars and local transportation and to the fact that city facilities such as water mains and sewage outlets are available to respondent's land. He compiled a list of sales which had taken place over a period of many years indicating the location of these sales with respect to respondent's land and described each of these sales in his report. He valued the lands as naked, unimproved, vacant land and considered that all the adjacent property was in place and that the situation with respect to the surrounding property was unchanged in every respect. He gave weight also to the fact that the lands of respondent are especially adaptable for a stockyards utility. He looked upon the area as bare land lacking public streets and alleys. He gave little weight to the assessed value of the property. The sales information which he gathered covers land of varying degrees of similarity to the land being appraised. Some of these individual sales suffered a degree of disability in so far as their direct application to the determination of value is concerned. Many of them had taken place a great many years in the past. None of the sales considered constitute an area as large in size as respondent's land and for this reason the witness gave consideration to the element of plottage and assembly. He placed the value of the land at a suitable level such as one would reasonably expect to exist over a period of about six months prior to the making of the appraisal, and due to that fact he did not give depression or stagnation values to the land. His report contains tabulations of general business statistics in Denver.

82. A careful consideration of the appraisal reports reveals nothing which accounts for the great difference in

the values arrived at by the witnesses for each of the zones or for the land as a whole. For an explanation of this difference in value, as is testified to by witnesses called by respondent and the witness called by the Government, the oral testimony of the various witnesses has to be examined. This has been done hereinafter in connection with the testimony of the various witnesses given with respect to each of the ten zones into which the land was divided.

Value of land in
Zone 1:

83. All witnesses were in agreement that the highest and best use of the lands of respondent is for stockyard purposes. They are of the opinion also that the value of Zone 1 has the highest value of any of the land in the general stockyards area, that is, the land west of the Chicago, Burlington & Quincy right-of-way. Witnesses for respondent divided Zone 1 into two areas, one of which is the land in the triangle south of the Exchange Building and between the Union Pacific right-of-way and the Chicago, Burlington & Quincy right-of-way. Upon the 3.6 acres in the triangle these witnesses placed a value of $15,000 per acre, and upon the remaining 34.934 acres in the zone they placed a value of $17,500 per acre. The total value placed upon the smaller portion was $54,000 and that placed upon the larger was $611,345, a total of $665,345 for the 38.534 acres. This total value includes that portion of Zone 1 which was sold to Armour & Company. The witness called by the Government did not sub-divide this zone, but valued it as a single parcel of land. He placed a value of $8,500 an acre upon the zone as a whole, or a total of $327,539 for the 38.534 acres.

84. A careful reading of the oral testimony of the witnesses called by respondent leads to the inescapable conclusion that while they visualize respondent's land as stripped of all improvements and available for industrial uses generally they considered not merely the availability of the land for all uses and purposes including its availability for

stockyard purposes but that they attached peculiar weight to the actual and profitable use to which the land is being put as a stockyard. That this is true is borne out by the following statement by the witness, Ivins, called by respondent: "What I meant when I answered * * * * * that if pens were constructed on Zone 3 it would increase the value of Zone 3, is that any appraiser in appraising land for industrial uses necessarily figures into his valuation the potential value of the site. Perhaps I should not limit this solely to industrial appraisals. Here in Denver we use statistics covering the number of people passing certain corners, and these figures are compiled by the University of Denver School of Commerce. I think these facts are recognized by all appraisers. The same thing is true in a certain measure in industrial property. If a particular site has clearly a highest and best use, I do not believe any appraiser can overlook the utilization of the tract, and therefore its potential value or potential earnings to a concern engaged in the highest and best use. If pens were on the tract north of Race Court in Zone 3, it would mean that the highest and best use, which all of us, including the Government appraiser, have recognized, namely the stockyards use, had come up to some of the potentialities as we saw them, viewing the land as naked land on March 23, 1935, and since those potentialities would have actually been realized by the construction of pens, this area would have tied in closely and become a part of the main area (namely Zones 1 and 2) as an enlargement of that area. Hence, the value of Zone 3 would then more nearly approach the value of the main tract than it did on March 23, 1935".

85. This same witness looked upon certain land as "land *necessary for expansion*". He *did not limit* the expansion solely to stockyards, but to any large industrial use such as steel mills, which, as its *business grew* would bring land *on the outside* into more intense use. Questioned as to the effect of construction on such lands he replied: "Yes, I would think that if the expansion lands which I have mentioned were built up with pens or covered with

railroad tracks it would add to their value". This same witness gave it as his opinion that he could sell the stockyards land at the value he had placed upon it to a stockyard industry; that he did not know as to whether he could sell the land at that value to another industry such as to a steel plant, but that he believed he could though he might have to hold the land for a year or two, but that he does not know of any industry that has made a bona fide attempt within the past five or ten years to secure 131 acres of land in or near Denver.

86. Another witness, Harry W. Newcomb, called by respondent is of the opinion that the easiest way to sell the land would be to offer it to someone wanting to go into the stockyard business. He thinks it would be an easy matter to secure some other stockyard to buy the property at the value at which witnesses for respondent have appraised it. He is of the opinion that it could be sold at the value at which these witnesses appraised it within a fair time which might be a year or two. He is of the opinion that he could sell it at that price for stockyards purposes within a period not to exceed three months. This same witness stated: "It is beneficial to any business to have increased business. It creates values for adjoining land and gives industry a potential earning power. In 1930 we tried to keep away from that (giving any weight to the fact that the stockyards was doing a good business or doing business at all) and think we did, but having had an experience of one appraisal we have been very careful, more careful in this appraisal to keep away from that than we might have been in the other. Now, I will not say that we did, but you have in mind all the time that there is an industry there and the whole thing is to keep in mind the use of the property for the highest and best purpose (stockyard purpose) that it can be used. We considered the property for the highest and best use * * * did give thought to the intensive use of the land".

87. Another land witness, L. F. Eppich, called by respondent testified as follows: "Yes, I think I could

sell the stockyards land today if they were vacated. My first effort would be for a stockyards industry, and as to whether any other industry could be found to take such a tract, that is a matter of effort on the part of the sales man. I think it is possible. Personally, I do not think I would go outside of the stockyards industry, bearing in mind that the packing houses and related industries are all in place as they are today. It seems to me that it would require no particular effort right in the city of Denver to secure a purchaser for that piece of land with all other industries in place. No, I did not say that I felt no other industry would take 131 acres. After I had exhausted the stockyards chance it seems to me that an oil refinery, a steel mill or a smelter or something in the rubber industry might be found to use the tract. Yes, it has been some time since any industry requiring 131 acres has located in Denver. I could not say just how long. The Chamber of Commerce's efforts in this regard have evidently not met with success."

88. Again this same witness testified: "Accessibility and utility are not wholly synonymous. Utility is the use of a tract. Yes, accessibility is one of the elements of value and utility is another. Utility also means usefulness but that does not necessarily mean the ability to make money. What I considered was the use to which the land could be put; the element of the ability of the land to make money applies to their use. I considered it in con nection with the stockyards area from the standpoint of potential use. Yes, I mentioned the fact that the land was available for any industry, but it is true that no industry within my memory has sought an acreage of that extent in the city of Denver."

89. Other testimony shows that while the land witnesses called by respondent visualized the land as vacant, they unconsciously thought of it as actually in use for a stockyard. This is particularly true with respect to the so called Blayney-Murphy sale discussed more fully herein-

after (see paragraphs 90-91). On this land, which lies directly across the Chicago, Burlington & Quincy right-of-way from respondent's property, there was constructed a few years ago a packing plant on land assembled for that purpose. A viaduct was constructed from the packing company across the railroad on to respondent's land. Other expenditures were incurred for a railroad siding, grading, surfacing, and for legal services. The cost of the viaduct was $40,000. With respect to this viaduct the witness, Newcomb, stated: "In my opinion, those additional expenditures must be considered in determining the per-acre cost of this triangular tract because they were necessary to make the tract properly accessible to the stockyards". The witness Ivins testified as follows: "I considered the land in Zone 1 to be of equal value, if not greater value than the land in Zone 9, because the land in Zone 1 is the very heart of the stockyards district." The witness Newcomb testified: "As to the stockyards, there is only one piece of property in Denver that is available for stockyard purposes and that lessens competition in property for sales for that purpose and when you lessen the competition in property for any purpose it creates a higher value for that property for that purpose."

90. As already pointed out all witnesses listed sales of land made over a long period of years within varying distances of respondent's land. Witnesses called by respondent listed in their report 11 sales which they said they took into consideration in arriving at the value which the placed upon this zone. The first of these sales was from the Hollis-Platt Horse Company to the Denver Union Stock yard Company on August 3, 1918. Witnesses estimated the value of this land at the time of the sale at $19,340 per acre. This land consisted of a series of lots located in a block in which there was a bank and a hotel. They are near some retail establishments and a residential section and are easily accessible to 46th Avenue. They are across the Chicago, Burlington & Quincy Railroad right-of-way

and at a considerable distance from Zone 1. The character of this land and its location are quite different from that in Zone 1. The land in this sale is more nearly similar to that which would be found in a retail and business section than in an industrial section. The second sale to which they gave consideration was one from Gordon B. Hollis to Joseph P. Murphy on August 23, 1924. This also was a sale of a series of lots in the sub-division known as West Elyria. This property fronts 250 feet on Humboldt Street and 125 feet on 47th Avenue. It is in the same general section as sale No. 2. On the land are horse barns and sheds which are being used as a sales barn and feed lot for horses and mules. This property lies across the Chicago, Burlington & Quincy Railroad from the respondent's land and is dissimilar so far as the location and potential use are concerned. The land in this sale is now being held for $22,500. Sale No. 3 is one from Gordon B. Hollis to the Drovers National Bank on January 8, 1920. This was of two lots. The indicated land value, as stated by witnesses, was $17,500 or $121,960 per acre. Sale No. 5, which was given consideration by witnesses is in the form of a lease of land belonging to the stockyards company and leased to the railroads which serve respondent and the industries in the packing district. The other sales considered by witnesses called by respondent were 10 to 15, inclusive, and sale 24. These sales are those which took place in the assembling of the Blayney-Murphy tract. The total land purchased by the Blayney-Murphy Company was 8.649 acres. With respect to the bearing of sales upon the value which witnesses placed upon Zone 1, the witness Ivins testified: "In Zone 1 we had to go outside of the stockyards district to find lands comparable. We found none that I considered of similar or equal value, but we figured that those lands reflected the values in Zone 1". The witness Newcomb called by respondent stated: "I do say that the valuation of the stockyards is very hard to establish by any sales that have been made in the immediate vicinity. There are a few sales that are comparable with lands in the stockyards and I have ap-

praised the value of the stockyards by my experience and best judgment of this character of property. We considered the sale, but I do not think you can appraise the value of stockyards ground by sales that have been made in that vicinity. There are not sufficient sales to place a valuation on such a large tract of ground as that, and it has to be appraised by experience and better knowledge of real estate values in this section and other sections in the city." With reference to the land in the Blayney-Murphy tract, the witness Ivins stated that: "The Blayney-Murphy tract, I do not consider, does not reflect the value in Zone 1, but Zone 1 reflects the value out there. I use it as corroborative of the opinion I formed of land in Zone 1". The witness Newcomb testified as follows: "Yes, I think we would have reached the same conclusion as to value if we had ignored the sales on all the property."

91. The witness Zelinski called by the Government listed among the sales considered by him some of those enumerated as having been considered by witnesses called by respondent. He is of the opinion that sales Nos. 1, 2, and 3 considered by witnesses called by respondent are not indicative of the value of land in Zone 1 for the reason that one of them is a small corner lot occupied by a bank and that the other two are so far removed from Zone 1 and are of such different character as to location and potential use as to make the selling price of no worth in arriving at the value of Zone 1. Witnesses called by respondent state that whether they considered the cost of the land in the Blayney-Murphy tract, or whether they considered as the value of the land the cost of the land itself together with $40,000 expended on the viaduct and certain other expenses bringing the total amount up to $89,717.75 for the 8.649 acres, would have had no effect upon the value which they placed upon Zone 1. The witness Zelinski called by the Government did give consideration to the cost of the Blayney-Murphy tract. He was of the opinion, however, that the viaduct leading from the Blayney-Murphy plant across the Chicago, Burlington & Quincy Railroad

is a plant facility and that its cost of construction is not a land cost. This opinion seems to be warranted for the reason that the inclusion of the cost of the viaduct, namely, $40,000, with the cost of the land could be justified, if at all, only on the assumption that a stockyard existed on respondent's land. The witnesses called by respondent would include also in land value the cost of a railroad siding, the cost of construction of which was $5,413.27. If the purchase price of the land, the cost of the grading, the cost of levelling and the legal expense incurred in acquiring land should all be included with the cost price of the land itself the cost of the Blayney-Murphy tract at the time of its acquisition would be approximately $5,100 per acre. The cost of the land as computed by witnesses called by respondent is $10,373 per acre.

92. Respondent's contention is that the improvements are necessary in order to make this land comparable to the stockyards land. Even if this were true, the value of the land in Zone 1 would not reach the figure which witnesses called by respondent have placed upon it, namely, $17,500 per acre, for the greater portion of it and $15,000 per acre for what they term the "triangle". If the improvements be left out of consideration, and the Blayney-Murphy land after being levelled is compared with the land in Zone 1, the general impression to be gained from the testimony of all witnesses is that the Blayney-Murphy land is comparable to the land of respondent in Zone 1. It is also the general impression to be gained from the record that the cost of the Blayney-Murphy tract reflected somewhat the fact that the sellers of the land received all their land was worth. The witness Newcomb, who assembled the Blayney-Murphy tract testified: "Yes, I assembled the Blayney-Murphy tract. I think the people that sold got a good stiff price but not more than the property was worth for the use to which it was put."

93. After giving due consideration to the character of the land in Zone 1 as compared with the character of contiguous and nearby land and after giving some consideration to the high-priced land in the vicinity of 46th Avenue, Lafayette Street, and Humboldt Street and considerable more weight to the cost of the land in the Blayney-Murphy tract, excluding, however, the cost of the spur track and the viaduct as cost of land, and taking into consideration other sales of lower priced land and all pertinent testimony of record bearing upon the value of respondent's land in Zone 1, it is found that the value of the land in this Zone is $8,500 per acre, or $283,560 for the 33.36 acres in this zone heretofore found to be used and useful in the rendition of services, the reasonableness of the rates for which is being determined in this order, and $41,710 for the 4.907 acres found not to be used and useful in the rendition of such services.

Value of land in
Zone 2:

94. Zone 2 contains at the present 22.982 acres (after the Armour sale), of which 22.147 acres have been found to be used and useful and .835 acre not used and useful. Witnesses called by respondent placed a value of $15,000 per acre upon this land and stated that this value is supported by sales 10 to 15 (the Blayney-Murphy tract) and by lease No. 5, which is a joint lease by the Denver Union Stock Yard Company to the six railroads under date of August 1, 1921. The witness Zelinski called by the Government placed a value of $5,000.00 per acre on the land in Zone 2 and stated that the value of the zone is arrived at by giving consideration to the same supporting data used in Zone 1 with a scaling down on account of the greater distance of the area from the more developed portions of North Denver. The witness called by respondent also looked upon the land in Zone 2 as less valuable than a portion of Zone 1, but equal in value to that portion of Zone 1 lying south of the Exchange Building.

The witness Ivins stated that judged from the industrial use standpoint the lands in Zone 1 and Zone 2 are very similar, that Zone 2 is equally adaptable for industrial purposes as the land in Zone 1, but that it is a little further removed from the peak of trading activities and has, therefore, a slightly diminished value in relation to Zone 1. He states that for the purposes of utility it is just as ideal as Zone 1.

95. It has already been pointed out why the values placed upon Zone 1 by witnesses called by respondent cannot be accepted. The same reasons which led to this determination lead to a like determination with respect to the value placed by them upon the land in Zone 2.

96. The witness, Zelinski, called by the Government placed a value of $5,000 per acre upon this land as contrasted with $8,500 per acre at which he valued the land in Zone 1. With regard to the difference in value between these zones, the witness was not considering the market activity on the zones at that time for the reason that if the lands were stripped of their present improvements it is impossible to tell whether the stockyard arrangements would be rebuilt the way it has been even though the property is being valued from the standpoint of the highest and best use. He states that a shading down of values from Zone 1 to Zone 2 is not on the basis of actual use which is being made of the property. He feels that the higher levels of values would exist at the southerly portion of the zone because it has a more direct access and is closer to the zone itself. He is of the opinion that Zone 2 should have a lower value than Zone 1. If Zone 2 were stripped of all improvements the only access to it would be through Race Court and the north end of Franklin Street.

97. The testimony with respect to Zone 2 is such as to make it unnecessary to discuss the various sales and

leases which may have a bearing on its value. These have already been discussed in arriving at the fair value of the land in Zone 1. It becomes a matter, therefore, of the extent to which the value of Zone 2 should be shaded down from that of Zone 1. Witnesses called by respondent think that Zone 2 is as valuable as a portion of Zone 1 and only a little less valuable than the other portion. The witness called by the Government is of the opinion that the land in Zone 2 is considerably less valuable than the land in Zone 1. The question of the value of Zone 2 turns then largely upon the situation of this land with respect to industries, other than that conducted by respondent, in the packing district. Leaving out of consideration the railroad tracks of respondent, this tract has railroad facilities on two sides. It has an improved street on the entire northerly boundary and a roadway on a portion of the westerly side. It is contiguous to the property of Armour & Company and is on the whole as conveniently located as is Zone 1 with respect to the Cudahy Packing Company. It is less conveniently located with respect to Swift & Company than is most of Zone 1. It is farther removed from the main activity in the packing district than is Zone 1. None of the witnesses attempted to make any mathematical computation as to the relative values of these two zones. No such mathematical computation seems to be possible. If one were made it would depend upon hypotheses resting upon personal opinion and the result of such a computation would still be a matter the validity of which depends upon the exercise of a reasonable judgment. A careful consideration of all the evidence with respect to this zone leads to the conclusion that it is less valuable than Zone 1. It is found that the value of the land in Zone 2 is $5,000 per acre, and that the value of the 22.147 acres found to be used and useful is $110,735 and that the value of the .835 acre found to be not used and useful is $4,175.

Value of Land in Zone 3:

98. Zone 3 contains 19.825 acres of which 12.117 acres have heretofore been found to be used and useful (paragraph 52) and 7.708 acres have been found to be non-used and useful. Witnesses called by respondent placed a value of $8,000 on this land and supported that value by a lease of the Denver Union Stock Yard Company to the Union Pacific Railroad of 9200 square feet of right-of-way extending to the feed lots located in this zone. They supported it also by the sale of approximately 366 square feet by the Northwestern Terminal Railway Company to the City and County of Denver for a consideration of $150.

99. The witness, Zelinski, called by the Government placed a value of $3,500 an acre on this land. He stated that he valued this land relative to the value which he placed upon Zone 1 and that he gave due regard for the cost of the land which, with a part of Zone 2, was purchased from the Riverside Cemetery Association in 1916 for $3,000 per acre.

100. The witness Ivins called by respondent stated that the capitalized value of the lease covering the 9200 square feet of right-of-way leased to the Union Pacific is at the rate of $8,772 per acre. He stated that this land is needed for expansion as business of the stockyards increases. It was this witness who said that when pens were constructed on this zone its value would more nearly approach the value of the main tract than it did on March 23, 1935.

101. The witness called by the Government took into account the accessibility of Zone 3 and the rail connections other than respondent's tracks which are upon it. He thinks that the fact that Race Court is on the southern boundary of this zone gives it an accessibility which the land would not have if Race Court were shifted northward to the county line. He is of the opinion, however, that the shifting of Race Court would make the tract more available for an uninterrupted use than it has at present. The wit-

ness is of the opinion that it would be feasible to get railroad trackage to this land either from the Burlington Railroad or from the Northwestern Terminal. Two sales near this land are known as the Local Beef & Mutton Company sales. These sales occurred in 1922 and 1920 and were at the rate of $3,000 per acre. This land is subject to overflow and the witness thinks this land is not worth what was paid for it. One of these sales consisted of 1.41 acres and the other of 1.34 acres purchased from the Fairmount Cemetery Association, the same association from which respondent purchased in 1916 all of Zone 3 and other lands in Zone 2.

102. These sales and the sale and lease referred to by witness for respondent are all very small when compared with the total area of Zone 3. All witnesses shaded down the value of Zone 3 from that of Zone 2, all of them giving it a value per acre of more than half of the value per acre placed upon Zone 2. It is found that the value of this zone is $3,500 per acre and that the value of the 12.117 acres found to be used and useful is $42,409.50 and that the value of the 7.708 acres found not to be used and useful is $26,978.

Value of Land in Zone 4:

103. Zone 4 contains 18.722 acres of which 10.725 acres have been found to be used and useful and 7.997 acres have been found to be non-used and useful. The land in this zone is that heretofore described as lying between respondent's hog and sheep division, Armour & Company's plant, and Swift & Company's plant on the east, and the South Platte River on the west. Witnesses for respondent divided this land into two portions. One portion contains 16.382 acres which do not require filling; the other contains 2.34 acres which do require filling. On that portion not requiring filling they placed a value of $12,000 per acre or $196,584 and on the other portion they placed a value of $10,000 per acre or $23,400. The total value which they placed

upon this zone was $219,984. This zone contains railroad trackage belonging to respondent and used jointly by the railroads which serve the yards. Witnesses for respondent took into consideration the right-of-way leased by respondent to the railroads and the reflected values of Zones 1 and 2. They stated that the lease on the land by respondent is on the basis of $8,772 per acre and that the total cost of grading to bring the land up to stockyard level was $30,000 and that the average capitalized value of this land on this basis is $15,834 per acre. They mentioned in their report no sales on which they relied to determine the value of this land.

104. The witness called by the Government placed a value of $2,500 per acre on this land. He gave some consideration to the sales discussed in connection with other zones and in addition he considered a series of sales numbered from 114 to 126. Some of these sales are of small portions of land; some of them were distressed sales, which throw little light upon the value of the land in this zone. In the case of the land involved in one sale from one packing company to another, the 2.7 acres involved were carried on the books on December 31, 1930 at $2,500. It is reported that the seller of this land considered it of a value of $10,000 per acre. A portion of this land later sold in a distressed transaction which throws no light upon its value. Another sale which took place in the vicinity of this zone was of 2.4 acres by respondent to a packing and provision company at a price of $1,000 per acre. Most of the sales in this series were of land at less than $3,000 per acre. A few were at a figure above $3,000. None of these sales involved any considerable acreage. Giving some consideration to the sales which have taken place within varying distances from Zone 4 and the character of the land itself and to its location with respect to other more valuable land owned by respondent, it is found that the value of Zone 4 is $2,500 per acre and that the value of the 10.725 acres heretofore found to be used and useful is $26,812.50 and the value of the 7.997 acres found not to be used and useful is $19,992.50.

Value of Land in Zone 5:

105. Zone 5 contains 12.64 acres all of which has been found to be non-used and useful. Witnesses called by respondent placed a value of $3,500 per acre on the land or a total of $44,240 for the entire tract. In support of this valuation they use a series of sales, some of them to the City and County of Denver made in connection with the improvement of the South Platte River. One of these was of 7.29 acres for $26,600, or $3,648 per acre. Another was the so-called Ruedy Products sale of approximately one acre at the rate of $3,562 per acre and another by the same company to Meyer and Dave Averich of something over an acre at the rate of $2,584 per acre. Another sale took place between the same parties and the land involved brought $3,000 per acre. Another sale was from the Fairmount Cemetery Association to private parties of something less than an acre at the rate of $2,500 per acre.

106. The witness called by the Government placed a value of $2,000 per acre on this zone. He gave consideration to a series of sales numbered 114 to 127, some of which have already been discussed in connection with the land in Zone 4. Giving due consideration to the character and location of this land with respect to industries in its locality and some consideration to the sales of these small areas of land, it is found that the value of this land is $2,000 per acre or $25,280 for all of the zone, heretofore found to be non-used and useful.

Value of Land in Zone 6:

107. Zone 6 contains 3.383 acres of which .235 acre, used as a roadway, has been found to be used and useful and 3.148 acres, of which a small portion is used for a railroad right-of-way and the rest of which is vacant land, has been found to be not used and useful. Witnesses for respondent placed a value of $10,000 an acre on this land

or a total of $33,830 and supported this value by a sale of 2.7 acres by the Burkhardt Packing & Provision Company to the Western States Packing Company in 1928 at a price of $10,000 per acre. The witness called by the Government placed a value of $4,000 per acre on this land or a total value of $13,532. This witness states that this zone is valuable for small packing-house development and due to the nature of the terrain would require more than the usual expenditure for heavy foundations. In arriving at the value which he placed upon the land this witness gave consideration to sales in the so-called Union Pacific Industrial development and to sales by the stockyard company to the Burkhardt Packing Company and the Union Rendering Company. This witness gave little consideration to the Burkhardt offer to respondent of $10,000 per acre for acreage in Zone 6 because of the divergence between this amount and the value at which the land was carried on the books of the Western States Packing Company, successor to the Burkhardt Packing & Provision Company. On the basis of all the information in the record with respect to the character and location of this land and with due consideration to the sales of parcels of land in this vicinity it is found that the value of the land in this zone is $4,000 per acre and that the value of the .235 acre heretofore found to be used and useful is $940, and that the value of the 3.148 acres found to be not used and useful is $12,592.

Value of Land in Zone 7:

108. There are in this zone 4.608 acres of land, all of which has been found to be not used and useful. Witnesses called by the respondent valued this land at $4,500 per acre or a total of $20,736. They stated that this value is supported by their sales 25, 33, 34, 35, and 36. This is a series of sales of small parcels of land some distance south of respondent's property. In 1920 the American Smelting & Refining Company sold to the City and County

of Denver about 41 acres on which there had formerly been a smelting plant. The land was practically a slag dump. The purpose of the city in purchasing the land was to buy some 300,000 or 400,000 cubic yards of slag which might be crushed and used. After the slag had been removed there were some 300,000 cubic yards of first class gravel in the tract. After the land had been bought by the city an offer of $7,500 and later one of $10,000 was made to the city for the land with the provision that the city might reserve the slag for its own use. The price per acre paid by the city for this land was $1,220. This sale hardly represents a straight-out land sale. Another sale considered by the witnesses called by respondent was one of Union Pacific Railroad Company to the National Fuse & Powder Company. The area involved in this sale was slightly more than an acre and the price paid was $3,532 per acre. The land is rough and has no street frontage. In order to reach it from the street an arroyo about 20 feet deep would have to be filled on the northeast; a deep open cut shuts off approach from that direction. This property has no trackage facilities. It is less favorably situated than is the land in Tract 7. Another sale was one from the Union Pacific Railroad Company to the City and County of Denver in 1932. The area of the land involved was .92 acre. The sale price was $2,174. This land fronts on no street and was used by the city to provide an outlet for a storm sewer. This land is less favorably situated than is the land in Zone 7. The City and County of Denver in 192[illegible] sold 2.8 acres to the National Fuse & Powder Company for $7,000. This is a price of $2,500 per acre. This land fronts on no highway or street. Another sale considered by witness called by respondent was one from Simon J. Feely to the National Fuse & Powder Company in 1929. The area of the land is 1.83 acres and consists of a series of 26 lots. These lots are located in a block bounded by 38th Street, Brighton Boulevard, and Delgany Street. These lots lie at a considerable distance south of respondent's property and on the main boulevard leading from the pack-

ing house center into the city. These lots are much more favorably situated than is the land in Zone 7.

109. The witness called by the Government placed a value of $3,000 per acre on this zone. He stated that the same sales information was considered by him as was the case in Zone 6, due regard being had for the triangular shape of the parcel and the difficulty of efficient industrial development on the southerly point. When respondent sold the County and City of Denver land for the purpose of widening 46th Street, it retained the privilege of building railroad tracks under, over, or at grade with 46th Avenue. A witness called by respondent is of the opinion that, because of this right retained by respondent, Zone 7 has accessibility to the industrial tract. The zone as such is not now served by any railroad, but in his opinion rails could easily be brought into the zone. The conclusion to be drawn from all the evidence with respect to this zone is that it is more valuable than some of the sales enumerated by the witnesses called by respondent, but that it is less valuable than the solid city block of lots cited by them. On the basis of all the testimony it is found that the value of Zone 7 is $3,000 per acre and that the value of the 4.608 acres hereinbefore found not to be used and useful is $13,824.

Value of Land in
Zone 8:

110. Zone 8 contains .759 acre, all of which has hereinbefore been found to be used and useful. Witnesses for respondent placed a value of $10,000 per acre upon this ground or a total of $7,590. This zone is a triangle with its longest side fronting on 46th Street. The Colorado & Southern Railroad right-of-way and the Burlington right-of-way border it on the other two sides. In valuing this land witnesses called by respondent took into consideration the street frontage of this land, the nearness of it to the stockyards and to the business district of Elyria. The witness Ivins testified that as regards this zone the land is so close to the

main body of the stockyards that it is not affected by the depression.

111. The witness Zelinski called by the Government valued this land at $6,000 per acre, or a total of $4,554. This zone in his opinion is available for a gasoline station or some like development or it has the possibility of being used for a minor industry which might have railroad trackage available from the Union Pacific and Colorado & Southern joint track. Its shape, however, in all probability precludes its use for any important industrial development. On the basis of all the testimony it is found that the value of this zone is $6,000 per acre and that the total value of the entire zone, namely, .759 acre heretofore found to be used and useful, is $4,554.

Value of Land in Zone 9:

112. The land in Zone 9 contains 7.081 acres of which 4.448 acres have heretofore been found to be used and useful and 2.633 acres to be not used and useful. Witnesses called by respondent placed a value of $20,000 per acre upon this land or a total value of $141,620. The witness called by the Government placed a value of $15,246 an acre upon this land or a total of $107,957. All the witnesses considered numerous sales which have been made in the vicinity of this zone. One set of sales is the so-called Union Pacific development near the intersection of 46th Street and Brighton Boulevard. Another sale to which much attention was given was that of the Murphy barn and lot, which is listed by the witness called by the Government in his report as Sale No. 21. This report gives the consideration for the land as $6,000 and the consideration for the improvements thereon as $16,000. The evidence is clear that regardless of the relative values of the land and improvements there is a reversal of figures and that the source of information gives the value of improvements as $6,000 and that of the land as $16,000. The area involved was slightly less than an acre. Most of the

sales which are involved in the Union Pacific industrial development are at figures considerably below the value per acre placed upon Zone 9 by witnesses called by respondent. In the few cases where the per-acre sale price exceeds that placed upon Zone 9 by witnesses called by respondent the areas are so small as not to be indicative of the value of the land in this much larger zone. As heretofore pointed out the land in this zone is more of a retail character than of an industrial character such as are the lands of respondent lying across the Chicago, Burlington & Quincy Railroad. The evidence is clear that the sales in the Union Pacific industrial development were bona fide sales.

113. Giving due consideration to the character of this land, its location relative to the sales which have taken place around it, and to the fact that the prices of the land and improvements were interchanged in the Murphy sale, it is found that the value of the land in this zone is $15,246 per acre and that the value of the 4.448 acres, heretofore found to be used and useful, is $67,814 and that of the 2.633 acres, heretofore found to be not used and useful, is $40,143.

Value of Land in Zone 10:

114. Zone 10 contains 2.303 acres, all of which heretofore have been found to be not used and useful. Witnesses called by respondent placed a value of $2,500 an acre upon this land or $5,757.50 upon the zone. The witness called by the Government placed a value of $1,500 per acre upon this zone or a total of $3,455. This land is practically unusable for any other purpose than the mining of gravel. It lies across the Chicago, Burlington & Quincy Railroad and County Road No. 83 from the main body of respondent's other land. The witness Newcomb called by respondent referred to its potential value as a dump heap and to the fact that one looking at the land would perhaps consider it worthless. All witnesses supported the values placed upon this land by various sales which have taken place at varying

distances from the zone. A small triangular portion of this zone was sold by respondent as a filling station site at the rate of $3,500 per acre. A number of sales listed by witnesses called by respondent were made at about $3,000 per acre. Giving consideration to all the information in the record with reference to this zone and to the depleted condition of the gravel pit on it and its lack of suitability for any other purpose, it is found that the value of the 2.303 acres, all of which has heretofore been found to be not used and useful, in this zone is $1,500 per acre or a total of $3,454.50.

115. A summary by zones of the value of the land of respondent hereinbefore found to be used and useful and of that found to be not used and useful is as follows:

Zone	Price per Acre	Total Area Acres	Total Area Total Value	Used and Useful Acres	Used and Useful Total Value	Not used and Useful Acres	Not used and Useful Total Value
1	$ 8,500	38.267	$325,270.00	33.360	$283,560.00	4.907	$ 41,710.00
2	5,000	22.982	114,910.00	22.147	110,735.00	.835	4,175.00
3	3,500	19.825	69,387.50	12.117	42,409.50	7.708	26,978.00
4	2,500	18.722	46,805.00	10.725	26,812.50	7.997	19,992.50
5	2,000	12.640	25,280.00	....	....	12.640	25,280.00
6	4,000	3.383	13,532.00	.235	940.00	3.148	12,592.00
7	3,000	4.608	13,824.00	....	....	4.608	13,824.00
8	6,000	.759	4,554.00	.759	4,554.00	....	....
9	15,246	7.081	107,957.00	4.448	67,814.00	2.633	40,143.00
10	1,500	2.303	3,454.50	....	....	2.303	3,454.50
	Total	130.570	$724,974.00	83.791	$536,825.00	46.779	$188,149.00

It is found that the fair value of respondent's used and useful land is $536,825.00.

VALUE OF RESPONDENT'S USED AND USEFUL STRUCTURES AND EQUIPMENT AND VALUE OF NON-USED AND USEFUL STRUCTURES AND EQUIPMENT

General statement:

116. Two witnesses were called to testify on the value of respondent's structures and equipment. One of these, John A. Zelinski, a valuation engineer called by the Government, testified with respect to respondent's structures. His qualifications have been given hereinbefore. The other witness, K. Lee Hyder, who was called by respondent, is an engineer and architect of wide experience. He is vice pres-

ident of the American Appraisal Company, and has ha
many years experience in connection with construction an
has had ample opportunity to observe the operations o
stockyards plants including the yard of respondent. N
question was raised in the hearing as to his qualification
None is raised here. He is thoroughly competent and wid
ly experienced.

117. The engineer called by the Government testifi
that the cost of reproduction of respondent's structures an
equipment, that is, the total cost of material and lab
together with overheads, is $2,525,150. Counsel for respo
dent stated on behalf of respondent that it would accept
correct this cost of reproduction new of its property, pr
vided a slight adjustment be made on account of an err
in inventory in the water and sewer systems. These a
justments were made and later introduced in evidence
the Government. Zelinski, engineer for the Governmen
stated that in valuing the property he reached his conclusi
upon the basis that the material was in place and that t
property is able and willing to function as a stockyard, th
is, as a business earning income. The total cost of reprodu
tion new of all respondent's structures and equipment,
gether with direct construction overheads but not indir
overheads, of $2,525,150 was allocated in accordance with
finding hereinafter made, $2,118,961 to used and use
structures and equipment, and $406,189 to non-used and u
ful structures and equipment. The witness, Hyder, engin
for respondent, stated that in his judgment the cost of
production new of respondent's structures and equipment
of the date of the valuation and as determined by the witn
called by the Government is substantially correct in det
It is his opinion, however, that this amount is only the c
of the reproduction new of the properties and construct
overheads. The witness Hyder called by respondent pla
a value of $2,491,233.44 upon respondent's structures a
equipment new before depreciation. To the cost of rep
duction new of structures and equipment the engineer cal
by the Government added certain percentages to cove

number of indirect construction overheads. To the cost of reproduction new as found by the engineer called by respondent he added a lump sum of $446,438. It has already been found that all the structures and equipment located on land found to be used and useful are used and useful, and that all structures and equipment located on land hereinbefore found to be not used and useful are not used and useful.

118. In conformity with this general finding, it is found specifically that the following units of property as indicated in the table are used and useful and not used and useful, and that the value of each unit, including construction headheads, is as set forth opposite the various items, and that the total cost of reproduction new of respondent's used and useful property, including direct overheads, is $2,118,961 and that of the non-used and useful structures and equipment, including direct overheads, is $406,189.

118-a. BUILDINGS, STRUCTURES AND EQUIPMENT FOUND TO BE USED AND USEFUL AND NON-USED AND NON-USEFUL

	Reproduction New	
	Used & Useful	Non-Used & Non-Useful
Office Buildings		
New Exchange Building	$ 228,259	
Old Exchange Building	96,900	
Chute House (Bulletin Office)	32,361	
General Buildings		
Garage and Shop	21,952	
Club House		$ 31,513
Stadium		176,371
Stadium Run-Over Shed	917	
Stadium Hook-up Shed	3,345	
Stadium Heating Plant		6,115
Restaurant	1,819	
Stadium Restaurant		6,066
Carpenter Shop	837	
Material Shed	436	
Hide Storage (One Story Tile Building)		14,845

Cattle Division		
Open Pens	489,548	
Feed Lots (Pens 4204-4212-4226)	2,723	
Cattle Dip	5,166	
Branding and Dehorning Chute #1	3,714	
Branding and Dehorning Chute #2	3,637	
Branding and Dehorning Chute #3	4,756	
Viaducts and Subways		
Foot Viaducts	13,229	
Stock Viaduct	19,684	
Subway	7,066	
Hog Division		
Hog Shed #1	10,501	
Hog Shed #2	12,557	
Hog Shed #3	12,528	
Hog Shed #4	17,762	
Hog Shed #5	6,706	
Immunization Plant	6,688	
Sheep Dip and Drain Pens	5,033	
Sheep Pens at Sheep Dip	2,193	
Sheep Division		
Sheep Barn #1	282,254	
Sheep Barn #2	285,465	
Horse and Mule Division		
2 Story Brick Barn #1	37,816	
Covered Alley Between H & M 1 and H & M 2	509	
2 Story Brick Barn #2	15,809	
Frame Shed #6	4,170	
Frame Shed #7	11,956	
Brick Barn	21,757	
Frame Barn (Show Barn)	10,089	
Brick Barn (Show Barn)	15,163	
Wash House		5,942
Sales Pavilion		12,885
Horse & Mule Barn #3 (3 Story Brick)	89,517	
Blacksmith Shop	5,124	
Retaining Wall	5,285	
Corrals & Outside	5,334	
Feed Facilities		
Hay Barn #6	6,022	
Hay Barn #2	4,328	
Hay Barn #3	13,372	

Hay Barn #4	18,564	
Hay Barn #5	5,989	
Corn Tank	3,189	
Loading and Unloading Facilities		
Burlington Chutes		29,654
Union Pacific Chutes		34,761
C & S Chutes		11,851
River Chutes		17,522
Truck Out Pens	916	
Hog & Sheep Truck-In Dock & Area	3,426	
Office at Hog & Sheep Truck Drive-In	902	
Scale Houses and Scales		
Cattle Scale #1	4,692	
Cattle Scale #2	4,192	
Cattle Scale #4	5,963	
Cattle Scale #5	5,394	
Cattle Scale #6	5,379	
Cattle Scale #10	6,222	
Cattle Scale #11	6,279	
Sheep Scale #7	5,663	
Sheep Scale #8	5,427	
Sheep Scale #12	5,206	
Hog Scales 3-9	6,119	
Hog Scales 13-14	6,492	
Hay Scale	1,180	
Hay Scale	1,600	
Hay Scale	1,180	
Manure Disposal		
Manure Dump (& Area)	8,058	
Manure Dump Office	923	
Manure Dump Shed	1,435	
Railroad		
Railroad Tracks		58,039
Trackmen's Tool House		261
Yard Master's Office		364
General Roadway	13,810	
Sewer System	97,806	
Water System	57,064	
Fire Protection	1,404	
Floating Equipment (Wagons, etc.)	7,221	
Horses, Mules and Harness	2,979	
Total Material and Labor	**$2,118,961**	**$406,189**

Condition percent:

119. The witness Zelinski called by the Government who appraised respondent's structures and equipment gave it as his opinion that taken as a whole respondent's property was 80.545 percent as good as new. It is the opinion of the engineer who was called by respondent that the structures and equipment and other physical property of respondent lacks 11.1 percent of being as good as new. This percentage deducted from 100 leaves a condition percent of 88.9. In arriving at these respective condition percents the engineers followed somewhat different methods of procedure. The engineer called by the Government was assisted in his work of appraisal by a number of engineers who are employed in the office of the principal valuation engineer at Kansas City, Missouri. There were five assistant engineers engaged in this work, each of whom gave particular attention to certain portions of respondent's structures and equipment. The chief engineer had each of these five engineers inspect each unit of equipment and structure of respondent's property and place upon it an estimate of its present condition as compared with its condition if new. The chief valuation engineer then took the percents condition as reported to him by his assistant engineers and, giving double weight to the opinion of the engineer who inventoried a particular unit, averaged the percents reported to him. Then, using this information as a guide, he inspected the property, checked the estimates as reported to him and arrived at a condition percent. He applied the condition percent of certain groups of structures and equipment against the total cost of reproduction new of each unit, thus ascertaining the cost of reproduction new less depreciation of those groups. The sum of the reproduction cost new less depreciation was related to the sum of the reproduction cost of those units. The resulting percentage represents the weighted average percent condition of all respondent's structures and equipment as testified to by Government engineer.

120. The engineer called by respondent is familiar with respondent's property, having observed it during the pro-

cess of construction of a number of units at different periods, particularly in 1923, 1925, and 1928 of the cattle yards, and the construction of the new sheep house in 1929. The witness has for many years observed also the concealed construction of the water and sewer systems, particularly when they were opened up for repair or alteration. Both witnesses took into consideration the factors of structural and economic obsolescence, together with the actual physical structural deterioration. The witness called by respondent is of the opinion that the remaining expectancy of life of a property item as compared to a similar expectancy of a new item is a definite factor in establishing the value of the property for sale, but that it is not a factor of material weight in the valuation of a property for rate-making purposes. For this purpose the actual condition of the property is controlling. Observed depreciation is all that should be given consideration, which depreciation would include such obsolescence as might exist. It is the personal conviction of the witness that the only elements of depreciation properly to be deducted in setting up value of structures and equipment as a part of a rate base is the actual depreciation which affects the capability of the property to render services as compared with new. He states, however, that observed depreciation has been given a somewhat broader interpretation by some authorities whereby it has been claimed that not only the depreciation that could be observed should be recognized but also allowances made for depreciation in certain portions of the property which could not actually be seen or inspected.

121. As regards the condition percent of many of the units of respondent's structures and equipment, the two witnesses were in close agreement. With respect to the condition percent of that portion of respondent's equipment which is under the ground, such for instance as its system of water and sewer facilities and the underground portion of posts throughout the stockyard and the inside of concrete pavements, there is considerable difference in the opinion of the witnesses as to the percent condition.

122. The witness Hyder called by respondent stated: "It is my personal conviction that the only elements of depreciation to be properly deducted in setting up value as a part of the rate base is the actual depreciation which affects the capability of the property to render services as compared with new." This view of depreciation gives less weight than is warranted to the actual physical condition of the property. A property in a very poor state of repair and destined to remain in use for only a short time might render service quite similar to that of a new property. Nevertheless, from the standpoint of management it would be unwise to follow a policy which looked upon these two properties as being anything like equal in point of physical deterioration. A reasonable conclusion is that the witness Hyder called by respondent placed a percent condition upon respondent's property somewhat higher than is warranted.

123. A very considerable portion of respondent's property consists of concrete alleys, pens with concrete flooring, and is constructed of posts, wood gates, troughs, and other facilities which can be replaced piece by piece and thus maintained in a high state of preservation through repairs. In the case of such a property one would expect to find it in a comparatively high state of preservation. On the basis of all the testimony and giving due weight to all the factors shown by the record to have a bearing upon the condition percent of respondent's property, it is found that the condition percent of the property is 80.545.

GENERAL OVERHEADS

124. The engineer for the Government added to the total cost of labor and material 5 percent of reproduction cost new for omissions and contingencies. He then added to this total certain percentages thereof on account of engineers' and architects' fees, legal expenses, general salaries and expenses, and fire insurance. He added also taxes paid by respondent during the year next preceding that in which

the hearing was held. To the sum of the total cost of material and labor and the items enumerated above he added 3½ percent to cover interest at 7 percent for a period equal to one-half of that taken by him to be the period of construction. He used the six months' period for the reason that not all of the capital would have to be raised at the beginning of the construction period but could be raised at various times during the year and that on the whole the interest paid would be on an amount of capital averaging about half of the total cost of reproduction new of material and labor.

125. Taking the total cost new of material and labor of the used and useful structures and equipment as heretofore found and the total cost of reproduction new of the non-used and useful structures and equipment as $2,118,961 and $406,189, respectively, and considering the omissions and contingencies, general overheads, and interest during construction, a summary of the total cost of reproduction new of respondent's structures and equipment found to be used and useful and those found not to be used and useful is as follows:

	Used and Useful	Not Used and Useful
Total cost of reproduction new labor and material	$2,118,961	$406,189
Omissions and contingencies 5%	105,948	20,310
	$2,224,909	$426,499
Engineers' and architects' fees 5%	111,245	21,325
Legal expense 1%	22,249	4,265
General salaries and expenses 2%	44,498	8,530
Fire Insurance ½ of 1%	11,125	2,132
Taxes during construction	30,613	5,868
	$2,444,639	$468,619
Interest during construction	85,562	16,402
	$2,530,201	$485,021
Net additions to used and useful property on account of inventory correction in water and sewer systems	2,283	....
Total cost of reproduction new	$2,532,484	$485,021

(See Govt. Ex. 26, 27, 28, S-2.)

126. On the basis of all the testimony and in consideration of those factors relating to value discussed hereinbefore, it is found that the cost of reproduction new of respondent's used and useful structures and equipment in place in a property which is a going concern capable of earning money, and earning money, is $2,532,484 and that the cost of reproduction new of its non-used and useful structures and equipment is $485,021. It is also found that the total cost of reproduction new less depreciation of respondent's used and useful structures and equipment in place is 80.545 percent (the percent condition hereinbefore found) of $2,532,484 or $2,039,789. It is also found that the cost of reproduction new less depreciation of respondent's non-used and useful structures and equipment is 80.545 percent of $485,021 or $390,660.

INTEREST ON LAND DURING CONSTRUCTION

127. The witness, Zelinski, the engineer for the Government, did not include in the value of respondent's land or in the cost of reproduction new of respondent's structures and equipment anything on account of interest on the value of the land during the period of construction. The value of the land of respondent hereinbefore found to be used and useful is $536,825 and the value of the land found not to be used and useful is $188,149. Seven percent of the value of respondent's used and useful land is $37,577.75, and seven percent of the value of respondent's non-used and useful land is $13,170.43. Seven percent is the rate used by the engineer for the Government in computing interest which he included in the value of respondent's structures and equipment. It is found that there should be included in the value of respondent's used and useful property $30,267 to cover interest on used and useful land during a construction period of one year.

WORKING CAPITAL

128. An accountant, H. E. Bufkin, called as a witness by the Government to audit the books and accounts of

respondent gave it as his opinion that respondent requires $117,000 as cash working capital in the conduct of its business. From the books and records of the company he ascertained the cash-requiring items and the amounts of money necessary to meet each item as it fell due. He ascertained also the rate of turnover of commodities used by respondent and the frequency of labor payment.

129. Respondent paid out during the 5-year period from 1930 to 1934, inclusive, $784,308.73 for hay, $34,159.93 for bedding, and for grain $80,987.48. The average annual amounts expended for these commodities during the period were $156,861.75 for hay, $6,831.99 for bedding, and $16,197.50 for grain. The average turnover of hay was approximately 3 times during the year, of bedding 4 times, and of grain 9 times. The total annual cost of each of these divided by the rate of turnover shows the amount of cash which is necessary to finance the supplying of these commodities to patrons. The resulting working capital ascertained through this computation is $52,287.18 for hay, $1,708 for bedding, and $1,799.72 for grain. These average amounts of money would not, however, be sufficient to meet the requirements at the peak seasons of the inventories. The accountant included in addition to the average amounts shown above $20,000 as working capital to meet the peak season inventory requirements. Respondent kept on hand during the 5-year period an average inventory of materials and supplies amounting to $10,633.84. The monthly average expenses incident to other cash-requiring items was $14,417.30. The weekly payroll for the period was $3,926.05.

130. Translating these figures into round numbers the accountant summarized the items of working capital, which, in his opinion, are required by respondent in the conduct of its business as follows:

Inventories	- Hay	$ 52,000.00
	- Bedding	2,000.00
	- Grain	2,000.00
	- Material & Supplies	11,000.00

Cash not elsewhere provided	14,000.00
Insurance and Deferred	12,000.00
Pay Rolls - Weekly	4,000.00
Cash to meet Peak Inventory	20,000.00
	$117,000.00

131. Respondent did not introduce any testimony as to the amount of working capital required in the conduct of its business. It did, however, introduce in evidence a statement showing its accounts receivable as of December 31, 1934, and the number of days the respective items had been due. The bills receivable outstanding on this date totalled $23,271.40 and the average number of days during which these bills had been due was 91.5. The witness Reinhardt, called by respondent, testified that the average amount of bills receivable for the year 1934 was in excess of that shown to be outstanding as of December 31, 1934. The average amount outstanding during the year was $38,000. The witness, Bufkin, called by the Government included nothing in his working capital on account of these bills receivable because he believes that respondent had nothing to sell other than service, which is dependent upon the furnishing of labor, material, supplies, and feed.

132. For purposes of computation, the accountant for the Government reduced the actual experience of respondent to a hypothesis in which inventories would be kept constant and perpetual, and the payroll continuous. In order that inventories and payroll may be kept at a hypothetical level, all sales from inventory and sales of the results of labor must be paid for when due. In the instant case not all of these are paid for when due.

133. Of the approximately $23,271 of bills receivable on December 31, 1934, whose average life was 91 days, slightly less than $8,500 was overdue on account of non-cash-requiring items, rents and manure sales, and the non-stockyard service of loading and unloading. Not all bedding is used in rendering a stockyard service. Not all capital tied up in straw, therefore, is used rendering a

stockyard service. Respondent has increased wages 8%, which will tie up somewhat more capital. It is not possible to make an exact mathematical allocation of these amounts as between stockyard services and non-stockyard services or as to the exact amount incident to bills receivable or account of stockyard services. On the basis of the computations as made by the accountant, the testimony of respondent's secretary and treasurer, and all other information of record, it is found that $139,300 is the amount of working capital which respondent is entitled to have included in the value of its property.

GOING CONCERN VALUE

134. Respondent's stockyard is a going concern. It has a long history of efficient and economic management which has won for it a reputation of rendering good service. It has been financially successful. It has never defaulted on its bond interest payments. It has paid its preferred dividends continuously since 1917. The audit shows that with the exception of the years 1916, 1917, and 1918 it has paid common dividends continuously from 1913 to 1934, ranging from two dollars to five dollars a share, and has paid six special dividends, two of them amounting to five dollars a share, one to fifty cents a share, one to two dollars a share, one to three dollars a share, and one to one dollar a share. Both the engineer Zelinski and the engineer Hyder considered respondent a going concern. The witness Hyder included in his value a separate amount to cover this element. The witness Zelinski did not include a separate amount. There is nothing in the entire testimony which indicates that any witness testifying on any subject had any other thought than that respondent is a going concern. The question to be determined, then, is not whether respondent is a going concern, but to what extent and in what manner going concern value is to be recognized.

135. The witness Hyder, the engineer called by respondent, stated that if capital should come to him with the

request that he establish a price which it could afford to pay to purchase the assets of respondent as an alternative to making a similar investment in purchasing land and developing a new stockyard, he would recommend a figure greater than $350,000 as the going concern value of respondent. (Transcript pp. 2055-2063.) This witness enumerates a number of elements which tend to create value in excess of investment in the physical properties. Among these are the volume of business handled by respondent, an established organization of executives and personnel, a system of records, good credit, and a well balanced lay-out of physical facilities. He considers as one of the most outstanding features to be given consideration the expenditure of upwards of $325,000 by respondent to induce packers and railroads to locate near its property. At the time he appraised respondent's property in 1930, he made studies as to the reasonable cost of development, that is, the expenditures which theoretically would have to be made in bringing the company to a status of normal operations following the completion of the physical properties. The assistant general manager of respondent testified that the cost of the land donated to packing companies and railroad companies by respondent has been $254,589.38. To this he added carrying charges up to the date of the hearing, that is, taxes and interest. The original cost plus carrying charges amounted at the date of the hearing to $325,547.10. Neither this amount nor the estimate by the witness Hyder based upon it can be taken as indicative of the amount of going concern value of respondent. The original cost together with carrying charges of what respondent has donated to packers and railroads is not a measure of going concern value. Original cost of the donations is a constant which increases with the passing of time because of continuous interest and taxes. Necessarily, original cost and carrying charges increased irrespective of whether respondent succeeds or fails, is efficiently or is inefficiently managed, or whether the going concern value is great or small, or whether there is any

such value at all. The testimony of record does not justify the inclusion of a minimum of $350,000 as a separate item on account of going concern value or any other separate amount.

136. The witness Zelinski, the engineer called by the Government, in arriving at the value which he placed upon respondent's property, did not include a separate allowance for going concern value, but he did value the property of respondent as a going concern. He valued the property of respondent in place and reached his conclusion by considering the fact that the material was in place and that the property of respondent is functioning as a successful stockyard and as a business earning an income. (Transcript p. 440.) He valued the property as a going concern and this element permeates all his estimates of value.

137. In adopting the cost of reproduction new less depreciation of structures and the value of land, as heretofore found with respect to structures, equipment, and land, consideration has been given to the element of going concern value. Adequate allowance for the element of going concern value has been included, although no separate item on its account has been set forth.

138. A summary of the value of used and useful land, the cost of reproduction new of structures and equipment, including direct construction overheads, indirect overheads, interest on used and useful land during construction, and working capital, and the cost of these, less depreciation where depreciation exists, of respondent as a going concern is as follows:

	Cost of Reproduction New	Condition Percent	Cost of Reproduction New Less Depreciation
Land—Used and Useful	$ 536,825	100	$ 536,825
Total Material, Labor, Direct Construction Overhead and Indirect Construction Overhead	2,532,484	80.545	2,039,789

Interest on Used and Useful Land during Construction	37,578	80.545	30,267
Working Capital	139,300	100	139,300
Total on Basis of Original Testimony			$2,746,181
Bridge in Process of Construction at Date of Oral Argument			22,500
Sewage Disposal Plant in Process of Construction at Date of Oral Argument			24,000
Total			$2,792,681

139. It is found that the fair value of the property of respondent as a going concern is $2,792,681, and that the rate base on which respondent is entitled to earn a fair return is $2,792,700.

F. Reasonable Rate of Return

140. Two witnesses, Howard D. Dozier and Arthur H. Bosworth, testified as to what rate of return in their opinion a schedule of rates for respondent should produce in order to be reasonable. Both of these witnesses gave opinions with respect to this matter in a former hearing. The witness Bosworth is a local investment banker with wide experience. He is a member of the board of directors of the General Stockyards Corporation, and of the Denver Union Stock Yard Company. No question was raised as to his qualifications at the time of the hearing and none is raised here. At the time he testified he had carefully read the testimony of the witness Dozier who testified on rate of return and had examined certain investment information submitted by that witness. He stated it as his belief that the theory of limiting electric light and power or other similar public-utility concerns to a fixed rate of return is in large part due to the fact that such utilities exercise a governmental function, and that frequently this is under a franchise which has a truly monopolistic grant and generally is accompanied by a truly sovereign grant of eminent domain. Where the Government elects to delegate to individuals the right and power to perform its duties (the performance of which if done by the Government would theoretically be on a non-profit basis,

or if profit were made it would be used to reduce taxes) the Government unquestionably has the right to say how much compensation those individuals shall have, namely, how much they shall be permitted to earn. In stockyard companies, he thinks, the situation is different; they do not exercise a Governmental function, do not have the right of eminent domain, and they are not monopolies.

141. The witness Bosworth pointed out the competitive character of respondent's business and discussed at length the hazards to which it is subject. He stated that it is always easier to raise capital for an enterprise which bids fair to grow rapidly in size and importance and that investors prefer to place their money in common stocks of going businesses which are enjoying rapid growth in sales and earnings. In the opinion of the witness, purchasers of common stock almost universally buy stock, not only on the strength of the current showing of earnings, but on prospective earnings as well, whereas investors in bonds and preferred stock are more interested in stability of earnings and a sufficient margin above interest and dividends so that a fixed rate of return will be paid regularly. The witness stated that the common-stock purchaser, however, has a different view, and that if one studies the earnings records of stockyards it is apparent that this is not a line of business where very rapid growth can be expected. The holder of common stocks of stockyard companies can rarely expect a stock dividend or any great increase in cash dividends. Therefore it is necessary for the common stock of stockyard companies to pay a much higher yield if the investor's dollar is to be obtained. The witness stated it as his opinion that the best measure of what the public will demand as a rate of return on stockyard property is the composite rate of return at which the securities of stockyards have been selling in the past. As indicative of what this composite rate of return on stockyard property is he submitted information showing the composite return arrived at by averaging the interest paid on the bonds, the dividends paid on the pre-

ferred stock, and the earnings per share on the common stock. This composite average yield for the years 1930 to 1934, inclusive, was 8.39 percent. The year 1934 was a grossly abnormal year because of the Government's cattle-buying program. If this year be eliminated, the composite average for the remaining years of the period is 7.75 percent.

142. The witness Bosworth submitted other information in which was shown, as of December 31, 1934, the same data for the stockyards operating at Wichita, Omaha, St. Louis, St. Paul, Fort Worth, St. Joseph, Kansas City, and Sioux City, which showed a composite average return for these yards of 9.923 as compared with a yield of 10.965 for Denver. The witness is of the opinion that 1934 was an unusual year and that it would be unsatisfactory to submit only this year. During the year 1933 the Government's hog-buying program was in operation and the witness is of the opinion that another year should be taken as representative. He took, therefore, figures for 1932 at Omaha, Kansas City, Fort Worth, Wichita, and St. Paul. These show that the composite return for these markets averaged 8.2 percent in 1932.

143. At the time the witness' testimony was given, the bonds of the Denver Union Stock Yard Company were selling to yield less than 5 percent and the preferred stock, which is callable, to yield 6.7 percent. It is the witness' opinion that, if the company had had no securities outstanding at the time he testified, it might have been possible to issue bonds on a 4½-percent basis and preferred stock on a 6½-percent basis. These securities, in his opinion, would sell at these yields only in case a substantial portion of the valuation of the property were represented by common stock.

144. In the opinion of the witness, the earnings per share of this common stock would have to be very attractive, at least 10 percent of its par value or market value in case the stock had no par value. It is the belief of the witness that the Denver Union Stock Yard Company is entitled to and should have a rate of return of 8 percent on the valuation of the property.

145. The witness is of the opinion also that, if the Secretary should permit respondent an 8 percent return, and if that 8 percent return when applied to the value of respondent's property as found by the Secretary should result in an increase in yardage charges, he would feel that respondent was entitled to make those charges as a matter of right, that is, to earn 8 percent on the fair value of the property, but that other considerations might enter into the wisdom of attempting to earn that return at a certain time, as, for instance, during a depression. The witness is of the opinion that the dividend policy of a corporation ought to be as liberal as possible to the stockholders, but not so liberal as to make impossible the building up of a reserve to take care of possible catastrophies or unforseen contingencies. In 1930 the witness was of the opinion that the Denver Union Stock Yard Company was entitled to a rate of return of 10 percent.

146. The witness Dozier called by the Government to give his opinion as to what rate of return a schedule of rates should produce in order to be reasonable, is an economist who has given many years to the study of investments and has made a first-hand study of the subject throughout the United States. His qualifications were not questioned at the hearing. They are not questioned here. He stated that in his opinion a schedule of rates which would produce over the next few years a return varying from 6½ to 7 percent would be reasonable. He qualified his statement, however, by saying that he did not think that a schedule of rates would be unreasonable if in the then current year, namely 1935, it should produce a rate of return somewhat below this zone of reasonableness. He stated that 1935 would in all likelihood be a year of subnormal receipts and that a schedule of reasonable rates could not be expected to yield a normal return in a year of subnormal volume and by the same token that if there should occur within the next five years a year of abnormally high receipts and the rates should produce a return of above 7 percent he would not for that reason alone judge the rates to be unreasonably high.

147. He testified in 1930 that it was his opinion that a schedule of rates which would have produced a rate of return of from 7½ to 8 percent in the year 1929 would have been reasonable. In his statement he included a table showing the average monthly yield of long-time Government bonds from January 1926 to June 1935. The average yield in 1930 of these bonds was 3.28 and for the year as a whole varied from 3.17 to 3.43. He introduced into evidence also a statement showing for industrial and public-utility corporations the trends in bond yields, preferred stock yields, and common stock yields. These yields were bracketed in steps of one-fourth of one percent from 4½ percent up to 7, and the number of issues showing the yield below 4½ percent and above 7 percent stated for each of the years from 1927 to 1935 inclusive. The tabulation shows also the weighted average annual yield for these same securities.

148. The average annual yields on public utility and industrial bonds were as follows:

Year	Public Utility Percent	Industrial Percent
1927	4.93	4.90
1928	4.81	4.66
1929	4.45	5.09
1930	4.59	5.03
1931	5.05	5.42
1932	5.59	6.05
1933	5.51	5.60
1934	5.31	5.64
1935 *	5.04	5.21

* As of May 10 only.

149. The average yields on preferred stocks for the same years are as follows:

Year	Public Utility Percent	Industrial Percent
1927	5.63	5.42
1928	5.29	5.24
1929	5.27	5.45

1930	5.14	5.36
1931	5.44	5.62
1932	7.05	7.72
1933	6.56	5.09
1934	*	**

* Thirteen out of 16 issues sold at 6.75 percent or more.

** Eleven out of 41 issues sold at between 4.76 and 5 percent, and 5 sold above 7 percent.

150. The average yields on common stock for the same years are as follows:

Year	Public Utility Percent	Industrial Percent
1927	4.99	4.98
1928	4.39	4.27
1929	3.26	4.09
1930	3.78	4.65
1931	5.20	5.75
1932	8.18	7.36
1933	7.58	4.82
1934	*	**

* Three issues selling at 5.50 or below, and 6 selling at 7 or above.

** Thirty-two out of 52 issues at 5 percent or below, and 6 selling at 7 or above.

151. The witness Dozier stated: "The conclusion which I draw from these yields is that within the period since the last hearing the yield on high-grade public-utility and industrial bonds has declined by about one percent. I am of the opinion that the yield obtainable on good preferred stocks at the present time is approximately one percent less than that obtainable at the date of the last hearing." He qualified this statement, however, by saying that an exception ought to be made in the case of public-utility stocks, both preferred and common. He attributed the decline in price, which would raise the yield, to special conditions, and did not believe that the situation with respect to public utility stocks should be taken as typical of the general investment market.

152. With respect to common stocks the witness stated: "The common-stock situation has been abnormal for many years, and it is difficult to draw any conclusion from facts relative to it which is thoroughly reliable in forming an opinion with respect to a normal yield on common stocks, but I do know this—that for much of the time for the last ten years the purchaser of common stocks has not been able to get as large a yield in current cash dividends as investors in bonds of the identical corporations issuing the stock."

153. After having formed a tentative opinion on the basis of his own investigation of the earnings and yields of various types of securities issued by corporations and after having reached a tentative conclusion with respect thereto, the witness checked these opinions by the yields on various types of securities as shown by financial service organizations and by other information issued by them. The purpose of this investigation was to determine the measure of decline in yields during the past few years. He gave it as his opinion also that stockyard properties in general represent a stable type of business, and included in his statement a comparison of the profits of industrial and public-utility corporations generally with earnings of a large number of stockyard companies throughout the United States and the earnings of the Denver Union Stock Yard Company.

154. The rate of return testified to by the investment banker in 1930 as reasonable was 10 percent and in the instant case 8 percent. The zone of reasonableness testified to by the economist called in 1930 by the Government was from 7½ to 8 percent, and in the instant case, from 6½ to 7½ percent. This represents a 2-percent decline in the yield testified to by the investment banker as of the two dates, and a difference of 1 percent in the zones testified to by the economist.

155. The conclusion to be drawn from the testimony is that there is a margin of at least one percent between the yield at the present time and that in 1930. In the litigation growing out of the 1930 hearing the court upheld as reason-

able a rate of return of 7½ percent and stated that this was a minimum. If from this figure there be deducted the minimum difference between the investment yield procurable then, and that procured now, a return of 6½ percent would result. Rates are made for the future and mathematical computations and the opinions of expert witnesses must be tempered by the exercise of a reasonable judgment. The low yield procurable on investments, and the opinion of at least one of the witnesses that the yields would continue low for a number of years, lead to the conclusion that respondent is entitled to charge rates which will yield an *average rate of return of 6½ per cent* on $2,792,700, hereinbefore found to be the rate base.

G. Reasonable Net Stockyards Operating Income

156. It is found that the reasonable average annual net operating income which should be produced by the rates hereinafter prescribed is 6-½ percent of $2,792,700 or $181,525.50.

H. Expenses As Incurred and Reasonable Operating Expenses.

General Statement:

157. In addition to producing a fair return upon the fair value of respondent's used and useful property, a reasonable schedule of rates and charges should produce enough revenues to pay all reasonable stockyard operating expenses, including adequate provision for depreciation and taxes. The audit hereinbefore referred to, and made by the accountant Bufkin, called by the Government, sets forth in minute detail all the expenses incurred by respondent on all accounts during the 5-year period from 1930 to 1934, inclusive. This audit contains also the balance sheets as of the beginning and end of each accounting period and reconciliations of surplus. No question was raised at the hearing as to the accuracy of this audit in reflecting the facts as shown by the books and accounts of respondent. In arriving at the amount of expense

incurred in rendering the services for which are charged the rates the reasonableness of which is determined in this order, an analysis has been made of the expenses as actually incurred in order to determine whether they were incurred in the rendition of a stockyard service and, if so incurred, whether reasonable. The table which follows lists all expenses as incurred and the purpose for which they were incurred. It shows also those expenses which have been eliminated from consideration altogether, those which were modified, and those which were taken into consideration in determining reasonable expenses to be covered into rates.

158. Some of the eliminations of expenses were made because the amounts shown to have been expended were on account of the rendering of services for which are charged rates the reasonableness of which is not being determined herein, and others were made in order that there might be substituted therefore amounts determined to be reasonable on the basis of all the testimony. Respondent incurs certain expenses which do not vary greatly from year to year, irrespective of the volume of business received and handled. In the case of those expenses which show a marked degree of uniformity from year to year, the amount considered to be reasonable is a round figure equal substantially to the 5-year average or the average for a lesser number of years when no expenses on account of the item were incurred in some years. In the case of the expenses on account of those items as to which there is variation, a tendency upward or a tendency downward, all the surrounding circumstances relating to the expenditure have been examined and an effort has been made to determine whether the tendency either upward or downward is likely to be permanent. In the case of all items, an examination has been made of all the testimony and of all the information of record to the end that the expenses covered into rates may be just, reasonable, and fair. The following table sets forth the total expenses incurred by respondent, those which have been eliminated altogether for any of the reasons stated above, those which have been discarded altogether and an amount restored, and the average.

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EXPENSES OF RESPONDENT 1930-1934

Gov't Ex. [illegible] Sched. NO.	1934 Total Expenses (Audit)	1934 Excluded	1934 Considered	1933 Total Expenses (Audit)	1933 Excluded	1933 Considered	1932 Total Expenses (Audit)	1932 Excluded	1932 Considered	1931 Total Expenses (Audit)	1931 Excluded	1931 Considered	1930 Total Expenses (Audit)	1930 Excluded	1930 Considered	Expenses Considered
34 Cost of Sales—Hay	$174,614.51	$174,114.20	$ 500.31	$105,264.66	$105,205.87	$ 58.79	$120,789.57	$120,607.75	$ 181.82	$173,671.38	$173,607.92	$ 63.46	$200,653.18	$200,369.48	$ 283.70	$ 217.62
35 " " " —Grain	13,254.27	13,254.27	—	9,009.58	9,009.58	—	12,310.14	12,310.14	—	18,733.67	18,733.67	—	30,129.24	30,129.24	—	—
36 " " " —Bedding	4,694.02	4,694.02	—	5,145.82	5,145.82	—	6,259.58	6,259.58	—	8,551.89	8,551.89	—	10,762.72	10,762.72	—	—
37 Yard Labor	118,348.84	36,788.78	81,560.06	88,680.92	32,033.46	56,647.46	97,217.34	33,754.97	63,462.37	103,015.28	33,298.93	69,716.35	108,711.66	34,674.09	74,037.57	69,084.76
38 Horse and Truck Labor	4,692.24		4,692.24	3,227.80		3,227.80	3,994.16		3,994.16	4,908.41		4,908.41	4,550.80		4,550.80	4,274.68
39 Current Yard Expense	2,959.79		2,959.79	2,682.18		2,682.18	2,603.72		2,603.72	2,540.01		2,540.01	3,110.89		3,110.89	2,779.32
40 Yard Cleaning	16,021.36	1,359.43	14,661.93	10,855.67	811.98	10,043.69	12,332.68	852.75	11,479.93	16,003.26	779.11	15,224.15	17,869.14	791.01	17,078.13	13,697.57
41 Office & Management Salaries	36,409.21		36,409.21	30,889.49		30,889.49	34,481.07		34,481.07	33,856.84		33,856.84	33,129.76		33,129.76	33,753.27
42 Officer's Travel & Entertain. Exp.	1,203.26		1,203.26	1,119.24		1,119.24	882.44		882.44	561.76		561.70	568.03		568.03	866.93
43 Rental of Offices	2,223.50		2,223.50	2,572.20		2,572.20	2,572.20		2,572.20	2,572.20		2,572.20	2,572.20		2,572.20	2,502.46
44 Office Supplies	2,419.00		2,419.00	1,698.56		1,698.56	1,876.07		1,876.07	2,103.48		2,103.48	2,280.26		2,280.26	2,075.47
45 Office Expense	155.33		155.33	176.89		176.89	281.62		281.62	303.71		303.71	297.11		297.11	242.93
46 Bank Service—Handling Cash	710.34	710.34	—	—		—	—		—	—		—	—		—	—
47 Engineering Expense	1,549.77		1,549.77	1,439.10		1,439.10	1,569.33		1,569.33	1,599.83		1,599.83	1,279.84		1,279.84	1,487.57
48 Legal and Collection Expense	625.68		625.68	677.68		677.68	788.40		788.40	1,184.72		1,184.72	604.45		604.45	776.19
49 Storehouse Expense	2,547.05		2,547.05	2,388.54		2,388.54	2,643.04		2,643.04	2,673.48		2,673.48	2,623.87		2,623.87	2,575.20
50 Telephone and Telegraph	1,298.67		1,298.67	1,407.93		1,407.93	1,661.09		1,661.09	1,673.25		1,673.25	1,493.63		1,493.63	1,506.92
51 Postage	370.56		370.56	343.71		343.71	374.65		374.65	369.76		369.76	311.72		311.72	354.08
52 Audit Fees	475.00		475.00	450.00		450.00	450.00		450.00	450.00		450.00	450.00		450.00	455.00
53 Directors' Fees	530.00		530.00	730.00		730.00	465.00		465.00	515.00		515.00	535.00		535.00	555.00
54 Rate Hearing Expense	1,044.39		1,044.39	14,543.02		14,543.02	4,076.55		4,076.55	1.35		1.35	19.65		19.65	3,936.99
55 Rates and Charges	6,069.21		6,069.21	6,100.00		6,100.00	9,809.75		9,809.75	15,773.34		15,773.34	6,182.08		6,182.08	8,786.88
56 Yard Electricity	959.70		959.70	801.09		801.09	818.50		818.50	802.67		802.67	760.99		760.99	828.59
57 Yard Heat Expense	341.88		341.88	242.26		242.26	338.24		338.24	430.06		430.06	362.23		362.23	342.93
58 Yard Water Expense	10,116.24		10,116.24	9,687.22		9,687.22	11,311.86		11,311.86	11,296.18		11,296.18	10,457.92		10,457.92	10,573.88
59 Car Partitions, Etc.	137.66	137.66	—	76.98	76.98	—	93.51	93.51	—	164.36	164.36	—	209.15		209.15	—
60 Estrays and Claims	418.72		418.72	166.36		166.36	270.83		270.83	463.49		463.49	719.41		719.42	407.76
61 Yard Casualty Insurance	2,536.92	709.48	1,827.44	3,538.26	1,156.10	2,382.16	1,265.85	404.98	860.87	2,526.99	709.51	1,817.48	3,755.65	1,028.39	2,727.26	1,923.04
62 Lease of Property	616.86		616.86	616.86		616.86	616.80		616.80	616.81		616.81	462.65		462.65	586.00
63 Horse & Mule Boarding Barn Exp.	3,240.60	3,240.60	—	2,455.41	2,455.41	—	3,156.20	3,156.20	—	3,459.58	3,459.58	—	2,301.94	2,301.94	—	—
64 Company Barn Expense	3,801.94		3,801.94	3,781.23		3,781.23	5,857.37		5,857.37	9,167.80		9,167.80	9,841.05		9,841.05	6,489.88
65 Grain Elevator Expense	32.40		32.40	33.09		33.09	32.86		32.86	33.15		33.15	32.85		32.85	32.87
66 Traffic—Solicitors' Salaries	6,929.83	491.52	6,438.31	5,582.19	387.77	5,194.42	8,030.00	555.87	7,474.13	7,490.45	474.03	7,016.42	6,790.79	454.64	6,336.15	6,491.89
67 " —Casualty Insurance	3.18		3.18	2.04		2.04	2.38		2.38	3.30		3.30	4.10		4.10	3.00
68 " —Miscellaneous	45.15		45.15	74.30		74.30	45.00		45.00	—		—	—		—	32.89
69 " —Soliciting Expense	6,667.39	472.90	6,194.49	4,921.79	341.90	4,579.89	6,650.10	460.35	6,189.75	6,775.02	428.76	6,346.26	6,914.10	462.89	6,451.21	5,952.32
70 Advertising	9,893.96	701.76	9,192.20	7,013.33	487.19	6,526.14	6,922.98	479.24	6,443.74	7,059.42	446.75	6,612.67	6,735.10	450.91	6,284.19	7,011.79
71 Dues, Donations & Subscriptions	3,823.84	3,600.59	223.25	3,148.68	2,900.28	248.40	3,154.51	2,786.11	368.40	2,958.04	2,604.56	353.48	3,342.07	2,944.95	397.12	318.13
72 Exchange Building Expense	19,626.02		19,626.02	14,800.72		14,800.72	17,177.54		17,177.54	19,491.47		19,491.47	17,972.09		17,972.09	17,813.57
73 Cigar Stand Expense	14,293.84	14,293.84	—	14,209.30	14,209.30	—	17,943.44	17,943.44	—	19,653.59	19,653.59	—	21,192.08	21,192.08	—	—
74 Garage Expense	16,473.05	12,361.98	4,111.07	7,820.97	5,583.11	2,237.86	—		—	—		—	—		—	1,269.79
75 H & M Div. and S. S. Property	6,308.24	3,386.96	2,921.28	4,332.49	2,326.16	2,006.33	3,969.81	2,131.43	1,838.38	8,075.03	4,335.56	3,739.47	8,988.09	4,825.80	4,162.29	2,933.55
76 Insurance—Fire, Tornado, Etc.	7,745.33	528.37	7,216.96	6,317.66	559.37	5,758.29	6,999.12	623.33	6,375.79	7,109.00	623.33	6,485.67	7,705.91	606.42	7,099.49	6,587.24
77 Taxes	80,127.02	48,850.94	31,276.08	65,208.72	33,220.49	31,988.23	63,110.92	31,638.14	31,472.78	66,677.88	32,645.06	34,032.82	71,845.70	35,402.29	36,443.41	33,042.66
78 Depreciation Expense	54,823.60	54,823.60	—	54,031.99	54,031.99	—	53,931.31	53,931.31	—	54,247.37	54,247.37	—	53,178.30	53,178.30	—	—
79 Interest on Bonds	66,242.37	66,242.37	—	69,375.00	69,375.00	—	70,125.00	70,125.00	—	70,875.00	70,875.00	—	71,625.00	71,625.00	—	—
80 Interest Paid	—	—	—	—	—	—	19.37	19.37	—	679.61	679.61	—	—	—	—	—
81 Bond Discount and Expense	3,190.56	3,190.56	—	3,252.48	3,252.48	—	3,314.52	3,314.52	—	3,376.47	3,376.47	—	3,438.36	3,438.36	—	—
82 Fiscal Agents, Registrar & Trs. Ex.	1,168.85	1,168.85	—	710.16	710.16	—	572.36	572.36	—	726.51	726.51	—	718.58	718.58	—	—
83 Appraisal Expense	3.40		3.40	—		—	—		—	—		—	—		—	.68
84 Dipping and Spraying Expense	812.47		812.47	986.24		986.24	1,881.31		1,881.31	2,280.22		2,280.22	2,153.31		2,153.31	1,622.71
85 Blacksmith Shop Expense	3,575.90	3,575.90	—	2,818.95	2,818.95	—	4,568.81	4,568.81	—	4,908.12	4,908.12	—	5,216.55	5,216.55	—	—
86 (Repairs—Yd Structures, Fences, Pens	12,896.88	12,896.88	—	4,340.71	4,340.71	—	5,255.73	5,255.73	—	9,712.01	9,712.01	—	6,490.05	6,490.05	—	—
86 (" —Chutes	1,361.58	1,361.58	—	750.59	750.59	—	911.09	911.09	—	1,041.14	1,041.14	—	696.28	696.28	—	—
87 " —Scales	199.94	199.94	—	262.63	262.63	—	262.24	262.24	—	247.16	247.16	—	648.66	648.66	—	—
88 " —Equipment & pers. Property	444.42	444.42	—	656.36	656.36	—	2,218.43	2,218.43	—	2,406.21	2,406.21	—	2,769.45	2,769.45	—	—
89 " —Railroad Tracks	37.50	37.50	—	73.10	73.10	—	11.86	11.86	—	44.68	44.68	—	10.78	10.78	—	—
90 " —Sewers	3,468.18	3,468.18	—	758.44	758.44	—	842.54	842.54	—	973.44	973.44	—	1,707.71	1,707.71	—	—
91 " —Water Pumps & Service L.	2,257.41	2,257.41	—	1,984.46	1,984.46	—	2,134.21	2,134.21	—	2,353.10	2,353.10	—	2,806.77	2,806.77	—	—
92 " —Roadway	325.68	325.68	—	191.59	191.59	—	249.98	249.98	—	114.18	114.18	—	128.26	128.26	—	—
93 " —Pavements	1,662.06	1,662.06	—	141.35	141.35	—	584.00	584.00	—	346.58	346.58	—	320.59	320.59	—	—
94 " —Garage	205.62	205.62	—	58.60	58.60	—	165.13	165.13	—	121.04	121.04	—	15.31	15.31	—	—
95 " —Company Auto Truck	704.59	704.59	—	426.68	426.68	—	451.86	451.86	—	147.65	147.65	—	241.32	241.32	—	—
96 " —Hay Barns	90.44	90.44	—	265.64	265.64	—	57.75	57.75	—	147.86	147.86	—	26.92	26.92	—	—
97 " —Grading	91.72	91.72	—	—		—	230.38	230.38	—	42.68	42.68	—	51.81	51.81	—	—
98 " —Grain Elevator	3.61	3.61	—	3.28	3.28	—	42.07	42.07	—	155.22	155.22	—	164.86	164.86	—	—
99 " —Furniture and Fixtures	127.11	127.11	—	4.19	4.19	—	18.08	18.08	—	16.85	16.85	—	—		—	—
100 Branding, Dehorning, Etc.	3,793.76		3,793.76	4,435.81		4,435.81	4,625.42		4,625.42	6,983.33		6,983.33	9,524.20		9,524.20	5,872.50
101 Drayage Expense	24.38	24.38	—	44.22	44.22	—	118.15	118.15	—	114.10	114.10	—	217.99	217.99	—	—
102 Bad Debts	44.69	15.10	29.59	519.00	44.90	474.10	1,610.40	—	1,610.40	33.91		33.91	12.20		12.20	432.04
103 Stadium Expense	—		—	—		—	—		—	—		—	201.93	201.93	—	—

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Cost of Sales:

159. The rates hereinafter prescribed include a provision for a reasonable spread between gross selling price and gross costs of hay, grain, and bedding. One of the factors taken into consideration in arriving at this spread was the actual gross difference between revenues received for these items and their costs. This eliminates the necessity of carrying throughout the computations the two gross figures, and reaches the same result through the use of one net figure. Cost of sales has, therefore, been eliminated from the expense account.

Yard Labor:

160. The audit reveals an expenditure of $118,348.84 in 1934 on account of yard labor. The expenditure for this purpose during this year was considerably higher than for any other year from 1930 to 1934, inclusive. This increase was due to the handling by respondent of Government cattle during the year 1934. The record shows that the additional expenses incident to handling these cattle were slightly over $6,000 on account of labor and overheads. The figure of $118,348.84 on account of yard labor shown in the audit includes also the labor used in connection with the loading and unloading of livestock arriving by rail which is not a stockyard service for which are charged rates, the reasonableness of which is being determined herein. After deducting the extraordinary cost of yard labor in 1934 and the cost of labor employed in the loading and unloading of livestock arriving by rail, the 5-year average expenditure on account of that labor employed in connection with the services for which respondent charges rates the reasonableness of which is being determined herein was $69,084.76. It is found that there should be covered into rates on account of this item $70,000.

Salaries:

161. The expenses incurred on account of officers' salaries and on account of management averaged for the

5-year period $33,753.27. It is found that there should be covered into rates on account of these salaries $34,000.

Interstate Commerce Commission hearings:

162. Respondent incurred small amounts in 1930, 1931, 1932, and 1934 on account of hearings before the Interstate Commerce Commission, and in 1933 approximately $14,500. Respondent is vigilant in the matter of railroad rates and looks to the end that those who ship livestock to its yards by rail may do so at reasonable rates. A reasonable amount for this purpose is a legitimate item to be covered into rates. Giving due consideration to respondent's expenditures in the past and to the testimony as a whole, it is found that there should be covered into rates on account of this item of expense $300 per month, or $3,600 annually.

Packers and Stockyards hearings:

163. The audit shows that the average expenditure on account of the hearings resulting from the enforcement of the Packers and Stockyards Act during the years from 1930 to 1934, inclusive, is $8,786.88. During this period more investigational work has occurred than is likely to be the case when once the reasonableness of the rates charged by respondent has been finally determined. Hearings before the Secretary of Agriculture in connection with the enforcement of the Packers and Stockyards Act are not formal litigation the expense of which the losing litigant customarily bears. Such hearings are in the nature of informal investigations and it seems reasonable to assess some of the expenses incident thereto upon respondent's patrons. It is to be presumed that there will be less expense in the future on account of this item than there has been during the last five years. It is found, therefore, that $100 a month, or $1,200 annually should be covered into rates on account of this item.

Dues, donations, and subscriptions:

164. Respondent has many calls for donations to local charities, local philanthropic organizations, and in support

of civic activities. Its total contributions on account of these requests during the past five years have ranged between $3,000 and $4,000 a year. In determining what dues, donations, and subscriptions should be passed on to the public through the rates charged, the guide has been that those contributions which are of peculiar benefit to respondent's employees and patrons should be covered into the rates and that the remainder of them should not be. This criterion was followed in the determination of reasonable rates to be charged by the St. Joseph Stock Yards Company, the reasonableness of which rates was upheld by the Supreme Court of the United States. An analysis of these dues, donations, and subscriptions as set forth in the audit shows that slightly over $300 annually was contributed to activities which benefit respondent's employees or patrons. It is found that there should be covered into rates on account of these items $325.00.

Garage Expense:

165. Respondent owns and for the years 1933 and 1934 operated a garage at which it repairs its own automobiles and trucks, buys its own gas and oil, and furnishes these services to others who may desire them. It is difficult to analyze the receipts and expenditures in connection with the operation of the garage in such a way as to determine the profit or loss sustained on it. The land on which the garage is located and the structures have been included in the used and useful property, and a return on these does not constitute an expense paid by the general public. The yearly cash income from the garage does not equal the cash outlay, but if respondent did not repair its automobiles and trucks in its own garage it would incur expenses elsewhere in doing so. It seems fair, therefore, to cover something into rates. Leaving out of consideration the cost of material and its selling price, the other expenses amounted in the year 1933 to $2,237.86 and in 1934 to $4,111.07, or an average for the two years of $3,174.46. It is found that there should be covered into rates on account of this item $3,175.00.

Horse and Mule Division expenses and livestock show expenses:

166. The horse and mule division has heretofore been found to be used and useful and the stock show property not. Many of the expenses incurred in connection with this property are incurred jointly by these two divisions on account of a small payroll, the use of horses, casualty insurance, heat, light, water, boiler inspection, and repairs and maintenance, which constitute the largest single item. Some method of allocation of these expenses has to be employed and, inasmuch as repairs and maintenance occasion the largest single expenditure, the expenses have been allocated on the basis of the value of the structures. On this basis of allocation the 5-year average of expenses allocable to the horse and mule division is approximately $3,000. It is found that there should be covered into rates on account of expenses in connection with the horse and mule division $3,000.00.

Taxes other than Federal Income Tax:

167. If Federal income taxes for the years 1930 to 1934, inclusive, be left out of consideration along with the capital stock taxes paid by respondent during the years 1933 and 1934, the only years during the period in which the capital stock tax was paid, respondent's tax bill for the entire period was $192,209 or an annual average of $38,443. This amount increased by $3,212, the annual capital stock tax, gives $41,655 as the taxes, other than Federal income taxes, to be paid annually by respondent. The total value of both land, and structures and equipment after depreciation heretofore found originally is $3,155,422. The addition of $22,500, the cost of the new bridge and $24,000, the cost of the new sewage disposal plant, brings this figure to $3,201,922. The total value of used and useful land and used and useful structures after depreciation is $2,623,114 or approximately 82 percent of the total. Eighty-two percent of $41,655 is $34,157, that portion of the taxes, other than Federal income taxes,

allocable to respondent's used and useful property. Evidence introduced and received at the time of the oral argument, subject to check, shows that respondent during the years 1937 to 1941, inclusive, will be subject to additional taxes on account of the Social Security Act in an amount of \$8,691.97, of which \$7,388.17 will be applicable to respondent's stockyard business. The sum of \$7,388.17 and \$34,157 shown above on account of other taxes is \$41,545.17. It is found that there should be covered into rates on account of taxes, other than Federal income taxes, \$41,545. An amount to cover Federal income taxes is hereinafter found.

Miscellaneous Expenses:

168. There are a number of other activities on account of which respondent incurs expenses or sustains a slight operating loss. These have not been discussed in detail but they have been given consideration in arriving at the total of miscellaneous expenses other than repairs and depreciation which respondent will be called upon to pay out of revenues received under rates prescribed as reasonable.

169. The total amount of the items hereinbefore found to be coverable into reasonable rates and those not discussed specifically, but taken approximately as incurred from 1930 to 1934 inclusive, is \$262,040.

Repairs:

170. In setting forth the expenses incident to the operation of certain portions of respondent's property, the accountant for the Government included the repairs as incurred by respondent. These repair expenses are not set forth in the table hereinbefore shown as separate *items*. The expenses on account of repairs therein set forth are applicable only to those items of property against which the figures appear. The 5-year averages on account of repairs of the specific items of used and useful property therein set forth are as follows:

Yard structures, fences and pens	\$ 7,739.08
Scales	324.13

Personal property	1,698.97
Sewers	1,550.06
Water pumps	2,307.19
Roadway	201.94
Pavements	610.92
Garage	113.14
Trucks	394.42
Hay barns	117.72
Grading	83.32
Grain elevators	73.81
Furniture and fixtures	33.24
	$15,247.94

It is found that there should be covered into rates on account of repairs not hereinbefore allowed in connection with other expenses $15,300.

Depreciation Reserve:

171. In addition to those miscellaneous expenditures which it is possible for respondent to pay as they are incurred, there is another item of expense which it cannot so pay, namely, depreciation. Deterioration is constantly taking place in respondent's property through rust, rot, decay and obsolescence. In order that respondent may not suffer an invisible wastage of assets, there must be set aside in a reserve a sufficient amount to offset this irreparable physical deterioration and accruing obsolescence. During the five years from 1930 to 1934, inclusive, respondent carried into its depreciation reserve the following amounts, the annual average of which is $54,042.51:

1930	$53,178.30
1931	54,247.37
1932	53,931.31
1933	54,031.99
1934	54,823.60

172. The engineer Hyder called by respondent who valued respondent's structures and equipment gave it as his judgment that $73,080 per year would be the amount necessary for respondent to carry into its depreciation

reserve. He arrived at this figure by determining that $58,080 was the depreciation which should be provided for periodic retirements and renewals of items of property with a definite life span, and $15,000 for general obsolescence. He further testified that the accrued depreciation of respondent's property as of December 31, 1934, was 11.1 percent which is to say that respondent's property was 89 percent as good as new on that date.

173. The engineer Zelinski called by the Government placed the straight-line depreciation upon all of respondent's property at $95,020 per year which did not include depreciation on certain items of underground structure heretofore discussed in connection with the water and sewer system. This witness estimated that the condition percent of the property was 80.545 percent, but stated that there is no relation between the condition percent and the period of remaining life as set up in his percentage tables. The reason for this is that condition percent is based upon observation of respondent's plant, while the composite life was arrived at by use of life-expectancy tables and the experience which one would expect in the course of normal maintenance.

174. The accountant Bufkin called by the government gave it as his opinion that, if $36,274 should be set aside each year and interest thereon computed at five percent semi-annually on a sinking-fund basis, respondent could make good the annual straight-line depreciation of $95,020 as testified to by the engineer. These amounts have reference to all of respondent's structures and equipment. The witness Hyder called by respondent testified that in his practice he had not found the sinking-fund method of determining depreciation in use. The accountant Bufkin called by the Government stated that the straight-line method of determining depreciation is commonly used.

175. Substantial justice in arriving at a proper amount to be covered into rates on account of depreciation of respondent's property is not dependent upon a particular method of mathematical computation but upon the observa-

tion of the condition of respondent's property, how this condition is maintained, what its policy has been with respect to repairs and retirements, and what its depreciation accounts show. Some of respondent's property is comparatively new. Other items have been in existence for considerable periods of time. The character of respondent's property is such that much of it, such as its pens and their appurtenances, can be maintained almost indefinitely through adequate repairs. Its buildings, such as the Old Exchange Building and the New Exchange Building, suffer depreciation. All these matters are factors which it is necessary to consider. Expenditures on account of repairs have already been set forth.

176. The books and records of respondent do not show in detail the history of respondent's depreciation reserve account prior to January 1, 1917, but on that date the account stood at $153,143.11. On December 31, 1934, it stood at $982,654.27, against which there had been charged on account of depreciation in property which had been retired $64,640.21. Of this amount, $4,805.39 represented depreciation on property retired prior to January 1, 1917. These amounts do not represent all the depreciation in these items of property, but only that which had taken place up to the date of their retirement. From 1923 to 1934 inclusive, or during the 12-year period prior to this inquiry, the surplus account of respondent had been increased by $2,994.50 on account of property retired and had been decreased by $14,377.12. This in effect represents additional depreciation over that shown in the depreciation account. The annual average depreciation taken out of the surplus was $948.50.

177. The actual depreciation observed by the witness called by the Government was $589,622. The condition percent observed by this witness was 80.545 percent, the lowest observed by any witness who testified with respect to respondent's property. In 1930 the same engineer called by respondent in this proceeding testified that the condition percent of the property at that time was 95 percent. The engineer called at that time by the Government placed the

condition percent of the property at 85 percent. The testimony of these witnesses and all the other testimony of record lead irresistibly to the conclusion that respondent's property has been maintained currently in a high state of physical preservation and in a condition to render an exceptionally high type of service. The observed depreciation by that witness whose condition percent was the least of all the percents testified to was $589,622, while the net balance in respondent's depreciation reserve on December 31, 1934, was $918,018.06. The conclusion to be drawn from all the testimony is that respondent throughout a long period of years has been carrying into its depreciation reserve account an annual amount more than sufficient to make good the physical deterioration and obsolescence in its property not restorable through repairs. As already set forth, the average annual amount carried into the depreciation reserve on account of all respondent's depreciable structures and equipment was slightly over $54,000. The accountant for the Government gave it as his opinion that an amount of $40,000 a year would be sufficient for the company to set aside annually as a depreciation reserve to provide for retirements and replacements in both used and useful and non-used and useful property. On the basis of a segregation of respondent's property into used and useful and non-used and useful as testified to by the witness Christensen who made a careful study of the uses to which respondent's property is put, the accountant gave it as his opinion that $33,200 should be carried annually into the depreciation reserve on account of used and useful property. The property heretofore found to be used and useful, while corresponding in a large measure with that so defined by the witness Christensen, does not do so entirely. Giving due weight to the mathematical computations shown in the record, but considerably more to the experience and the policy of respondent, it is found that $35,000 annually on account of depreciation should be covered into rates, the reasonableness of which is being determined herein.

Federal Income Tax:

178. In the table of expenses shown immediately following paragraph 158, all Federal income taxes paid by respondent were eliminated for the reason that an amount adequate for this purpose should be restored when computed upon the income to be received from the rates hereinafter prescribed. The Revenue Act of 1936, of which judicial notice is here taken, provides that the first $40,000 of corporate taxable income shall be taxed at $4,840 and the remainder at 15 per cent. This Act also levies a tax on undistributed income.

179. The gross revenue produced by an application of the rates hereinafter prescribed to the number of head of livestock and the amount of feed hereinafter found to be reasonable rate factors amounts to $530,117. From this amount of gross revenue certain items, namely, operating expenses, including repairs, and a reasonable amount on account of depreciation, are deductible in arriving at the net taxable corporate income. These amount to $325,415. Bond interest paid and bond interest received on tax-exempt Government obligations owned are also deductible in arriving at net taxable income. The bond interest paid by respondent during the year 1934 was $66,242.37. The value of those portions of respondent's land, structures, and equipment heretofore found to be used and useful is 82 percent of the total value of all of respondent's land, structures, and equipment. This percentage applied to the $66,242.37 bond interest paid by respondent is $54,319. This amount has been taken as the bond interest allocable to respondent's used and useful land and property. This same percentage applied against $2,171.68 interest received from investment in tax-exempt Government bonds is $1,781. The sum of these two deductions in $56,100. Total deductions are $381,515. It is found therefore that $21,130 should be covered into rates on account of Federal income tax. This amount is computed as follows:

Gross Income	$530,117
Deductions	381,515

Taxable Income	$148,602
Tax on $40,000	$4,840
Tax on remainder ($108,602) at 15%	16,290
Total Federal Income Tax	$ 21,130

Federal Surtax on Undistributed Profits:

180. Should respondent receive gross revenues equal approximately to those indicated from the application of the rates prescribed to the volume of business used as a rate factor and pursue the same dividend policy in the next few years as it pursued in 1934, it would not be subject to the federal surtax on undistributed profits. It is found that nothing should be covered into rates on account of this tax.

Increase in Pay Roll:

181. Respondent introduced evidence at the date of the oral argument showing that respondent had granted an increase of eight percent in wages and salaries except in the case of the four executive officers. That portion of the increase applicable to respondent's stockyard services is $13,074.96. It is found that $13,075 should be covered into rates in addition to the amounts hereinbefore covered into rates on account of pay roll.

I. REASONABLE EXPENSES

182. A summary of the amounts heretofore found to be reasonable expenses to be covered into rates to be charged by respondent is as follows:

Reasonable rate of return	$181,526
Miscellaneous expenses, other than repairs and depreciation reserve	262,040
Repairs	15,300
Depreciation Reserve	35,000
Federal income tax	21,130
Increase in pay roll	13,075
	$528,071

J. VOLUME OF BUSINESS REASONABLY TO BE EXPECTED

183. Respondent is entitled to charge rates which will produce revenues adequate to meet all of the costs, expenses, return, and reserve requirements set forth in paragraph 182. In arriving at a schedule of rates which will produce this amount of revenue consideration must be given to the number of head of livestock yarded and to the amount of feed, grain, and bedding sold, and to the miscellaneous services rendered.

LIVESTOCK RECEIVED FRESH FROM THE COUNTRY, RESOLD IN THE COMMISSION DIVISION, RESOLD ELSEWHERE, REWEIGHED FOR THE PURPOSE OF SALE, AND DIRECTS

184. The number of head of livestock arriving fresh from the country, resold in the commission division, resold elsewhere, reweighed for the purpose of sale, and directs during the 5-year period from 1930 to 1934 is set forth in the following table:

	1934	1933	1932	1931	1930	5-Year Average
Cattle						
Rail and Resales	403,543	233,474	249,845	319,829	390,496	
Federal Surplus Relief Corp.	146,408	....	....	....	....	
	257,135	233,474	249,845	319,829	390,496	290,156
Truck-ins	111,449	88,150	79,245	62,086	41,285	
Federal Surplus Relief Corp.	4	....	....	....	....	
	111,445	88,150	79,245	62,086	41,285	76,442
Pure Bred Bulls	842	833	1,269	1,639	1,535	1,224
Total Rail and Resales, Truck-ins and Pure Bred Bulls	369,422	322,457	330,359	383,554	433,316	367,822
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	16,526	9,771	9,287	12,561	21,201	13,869
Resold to Others	40,591	56,042	25,445	30,670	54,931	41,536
Total Resold and Reweighed	57,117	65,813	34,732	43,231	76,132	55,405
Calves						
Rail and Resales	75,687	25,724	20,342	33,676	51,535	
Federal Surplus Relief Corp.	53,375	....	....	....	....	
	22,312	25,724	20,342	33,676	51,535	30,718
Truck-ins	37,452	27,655	26,460	24,548	21,454	
Federal Surplus Relief Corp.	5	....	....	....	....	
	37,447	27,655	26,460	24,648	21,454	27,513
Total Rail, Resales & Truck-ins	59,759	53,379	46,802	58,224	72,989	58,231
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	581	769	505	375	1,031	652
Resold to Others	2,883	1,707	744	537	1,911	1,556
Total Resold and Reweighed	3,464	2,476	1,249	912	2,942	2,208
Hogs						
Rail and Resales	33,409	49,398	65,735	116,947	117,894	76,676
Directs	157,240	198,655	112,394	110,152	147,823	145,253
Federal Surplus Relief Corp.	....	21,842(1)	....	....	....	(1)4,368
	190,649	226,211	178,129	227,099	265,717	217,561
Truck-ins	260,579	294,312	308,928	237,624	168,486	
Fed. Surplus Relief Corp.	....	39,510	....	....	....	
	260,579	254,802	308,928	237,624	168,486	246,084
Total Rail, Directs, Resales & Truck-ins	451,228	481,013	487,057	464,723	434,203	463,645
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	....	16	43	....	....	12
Resold to Others	162	57	315	365	210	222
Total Resold & Reweighed	162	73	358	365	210	234
Sheep						
Rail and Resales	2,296,212	1,993,748	2,129,302	1,796,185	1,529,587	
Fed. Surplus Relief Corp.	116,627	39,079	....	....	....	
	2,179,585	1,954,669	2,129,302	1,796,185	1,529,587	1,917,866
Truck-ins	80,022	66,930	67,240	54,112	31,342	59,929
Total Rail, Resales and Truck-ins	2,259,607	2,021,599	2,196,542	1,850,297	1,560,929	1,977,795
Resold and Reweighed for Purposes of Sale:						
Resold to Dealers	....	1,944	80	604	1,170	760
Resold to Others	77,638	58,311	51,834	123,897	68,841	76,104
Total Resold & Reweighed	77,638	60,255	51,914	124,501	70,011	76,864

(1) Deduction

See Govt. Ex. 38, pp. 73 to 76, Govt. Ex. 43, and Respondent's Exhibit F.

185. Another source of income to respondent is the profits made on the hay, grain, bedding, and other types of feed sold. During the years 1934 and 1933 considerable amounts of hay and some grain were sold to the Federal Surplus Relief Corporation. This is not business upon which respondent can depend each year, but is an abnormal volume of sales incident to the handling of Government animals. Respondent also transfers at cost some of its inventory to the company barn and the boarding barn. The amount so transferred is also contained in the totals shown in the audit. Inasmuch as respondent makes no profit on these transfers they should be deducted in arriving at the amount of hay and grain on which respondent may be expected to make a profit. Respondent uses a considerable amount of straw in bedding cars for the loading out of livestock. The following table shows the amount of all kinds of hay, the amount of corn and other grain, and the amount of bedding which respondent sold, the amount which it sold to the Federal Surplus Relief Corporation, and the amount which it transferred at cost and the amount on which it made a profit during the 5-year period from 1930 to 1934.

	1934		1933		1932		1931		1930	
All Kinds of Hay (Cwt.)		236,169		161,229		167,708		217,652		226,886
Fed. S. R. Corp.	73,155		2,007		....		....		....	
Transfers—										
Co. Barn	1,135		1,416		2,894		4,837		4,325	
Board. Barn	1,557		1,377		1,643		1,748		894	
Other	....	75,847	990	5,790	1,650	6,187	....	6,585	....	5,219
Amount Sold at Profit		160,322		155,439		161,521		211,067		221,667
Corn Regular (Bu.)		17,423		19,541		22,109		26,543		28,151
Fed. S. R. Corp.	....		1,712		....		....		....	
Transfers—										
Co. Barn	(34,450) (lbs. or) bu.—615		(36,000) (lbs. or) bu.—643		(55,700) (lbs. or) bu.—995		(88,300) (lbs. or) bu.—1,577		(78,150) (lbs. or) bu.—1,396	
Board. Barn	(41,950) (lbs. or) bu.—749	1,364	(35,400) (lbs. or) bu.—632	2,987	(41,950) (lbs. or) bu.—749	1,744	(50,300) (lbs. or) bu.—898	2,475	(32,150) (lbs. or) bu.—574	1,970
Amount Sold at Profit		16,059		16,554		20,365		24,068		26,181
Bedding (Bales)		24,012		27,587		33,719		42,075		43,679
Transfers—										
Co. Barn	477		454		726		980		945	
Board. Barn	509		451		565		608		315	
Other	....	986	50	955	50	1,341	70	1,658	35	1,295
Amount Sold at Profit		23,026		26,632		32,378		40,417		42,384

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186. The number of head of livestock handled and the amounts of the different kinds of feed sold by respondent are helpful in determining a schedule of reasonable rates in that they are an indication as to the volume of business to be expected in the future. The record contains much evidence with respect to the trade territory from which respondent draws the bulk of its livestock, the number of head which have moved to various markets, including that at Denver, and the trend of the receipts of respondent from this trade territory. It contains also much testimony with respect to conditions which have prevailed and the opinions of two competent witnesses as to what volume of receipts respondent is likely to receive within the next few years.

187. Respondent's assistant general manager considered the years 1933 and 1934 as abnormal, and stated that in his opinion the livestock industry would not recover from the effects of the drouth before the first of January, 1937. He estimated that respondent's net operating income in the year 1935 would be $189,430.71. This was $54,936.96 below that received in 1933. He predicated this net operating income upon revenue-producing receipts in the following numbers:

	Rail	Drive-ins	Total
Cattle	203,530	76,815	280,345
Registered bulls	1,043	....	1,043
Calves	20,430	21,955	42,385
Hogs	135,958	140,942	276,900
Sheep	1,651,829	56,371	1,708,200
Horses and mules	6,951	....	6,951

188. It was stipulated at the time of the hearing that the monthly reports of respondent to the Department of Agriculture showing receipts of livestock at the Denver market for the years 1935 and 1936 should become a part of the record. According to these reports the volume of receipts for the year 1935 and 1936 was as follows:

	1935	1936
Cattle	482,421	489,768
Calves	78,279	73,767
Hogs	362,919	496,635
Sheep	2,903,355	3,023,893

189. Not all receipts of livestock at respondent's yard pay a yardage charge and some of them do not consume feed while in the yards. During the 5-year period from 1930 to 1934, inclusive, respondent collected yardage on approximately 89 percent of the cattle arrivals, 82 percent of the calf arrivals, 76 percent of the hog arrivals, and 75 percent of the sheep arrivals.

190. The application of 89 percent as to cattle, 82 percent as to calves, 76 percent as to hogs, and 75 percent as to sheep to the total receipts for 1935 and for 1936 results in the following volume of revenue-producing livestock for the two years:

Year	Cattle	Calves	Hogs	Sheep
1935	429,355	64,189	275,818	2,177,516
1936	435,894	60,489	377,443	2,267,920

191. The volume of receipts set forth in the preceding paragraph does not include the trader business handled within respondent's yards. The rates of respondent now in effect assess no yardage charge upon trader livestock except that sold in the commission division. The only contribution other than this which this class of livestock makes toward the support of the yards is the profit to respondent on hay and grain which it sells to dealers. The number of animals resold, reweighed for purposes of sale, resold to dealers, and resold to others is set forth in the table following paragraph 184.

192. The livestock purchased and disposed of by traders occupies a considerable portion of respondent's yards. In September each year traders are assigned pens in blocks 2600 to 3500 of respondent's property. These blocks contain

approximately 160 pens and the adjacent alleys. During the light season traders operate in the commission section in order to avoid the necessity of driving livestock to the trader division. In those portions of the yards occupied by the traders there are scales used for the most part by them.

193. Respondent claims that it is both impracticable and impossible to assess and collect a yardage charge on trader livestock other than that which is sold for the traders in the commission division. It is impracticable, respondent claims, because it would discourage traders from buying and thus lessen the demand for livestock, and impossible because the traders will not pay the charge.

194. The witness Pexton computes the amount of trader volume which does not appear upon the supply side of the market after the traders purchase it, and of the amount which does so appear. According to his estimate, 21 percent of trader livestock would come back into the market and compete with livestock already on the market or that to arrive in the future. The conclusion which the witness draws is that the traders increase the demand for livestock to a greater extent than they increase the supply of it, and thus tend to maintain prices at a higher level than would otherwise prevail.

195. The claim is made that since this is the case the shipping public derives more benefit from the higher prices resulting than it suffers disadvantage because the traders pay no yardage charge.

196. There is other testimony to the effect that traders increase the competition on the market and for this reason should have whatever is necessary for them to complete their operations without having to pay additional charges.

197. The presence of the traders on the market is doubtless a stabilizing factor for they can buy and hold livestock when the runs are heavy and dispose of it when the runs become lighter, but to say that they raise the general price level higher than it would be but for their presence is specu-

lative. The effect of all the marketing machinery is to bring about prices at all markets which bear such relationship to each other as the various factors warrant. The price at one market affects prices at other markets. Prices will not remain out of line for any great length of time. A trader who buys livestock at Denver and ships it to another market for sale appears on that market as a seller and tends to lower the price. The lowering of the price at that market may have the effect of lowering the price at Denver. It is difficult, if not impossible, to determine what effect the presence of traders at the various markets has upon the average altitude of prices. This is not to say, however, that the trader does not play a part in price determination. To say that the trader may be a desirable part of the market machinery is not to say that he should not pay his proportionate and reasonable share of the cost of the conduct of the market.

198. The traders have set up their places of business within respondent's stockyard and conducted it without charge, except in so far as respondent makes a profit on feed which the traders purchase and from the yardage which respondent collects on livestock resold for traders in the commission division. It may be that respondent has the right to render free services to one class of its patrons if by so doing it does not have to maintain higher charges for services rendered to others. It is, however, unjustly discriminatory as well as unreasonable for respondent to maintain a large section of valuable property and to incur numerous expenses in the rendition of free services to one class of its patrons and then remunerate itself through a charge on another class which is greater than necessary to cover the cost of rendering the service to the latter class.

199. Respondent claims that its condition is peculiar and that it is in a different state with respect to the traders operating on the Denver market than are those stockyards located on the Missouri River, and the Mississippi River, and that located at Chicago. This may well be the case, but the evidence of record does not warrant the rate-maker in relieving the traders of any yardage charge whatsoever.

200. Another witness, C. L. Harlan, an employee of the Bureau of Agricultural Economics, who is thoroughly familiar with the movement of livestock throughout the country, gave extended testimony with respect to the livestock conditions in the states of Colorado, Wyoming, and New Mexico from which originate by far the greater proportion of respondent's cattle. During the 5-year period from 1925 to 1929 respondent received a number of cattle ranging from about 14 percent to about 21 percent of the number on farms in these states on January 1 each year. For the 5-year period from 1930 to 1934 these percentages ranged from 11.1 percent to 18.3 percent. For the first of these 5-year periods the average number of cattle receipts of respondent was approximately 609,000, and for the second 5-year period 541,000. The witness estimates that there will be an increase of cattle in Colorado during the period from 1935 to 1939. He was of the opinion that the marketings at the beginning of this period, that is in 1935 and 1936, would probably be small because of the necessity of restocking, but he was of the opinion that for this period as a whole he did not expect marketings to average smaller than for the five years from 1929 to 1933.

201. Receipt of hogs at the Denver market has increased somewhat steadily for the 15-year period from 1920 to 1934. Most of the hogs received by respondent came from Colorado and Nebraska and practically all the rest of them from Wyoming and Kansas. Hog numbers have been drastically reduced throughout the entire country, and especially in the States that furnish supplies to the Denver market. The witness is of the opinion that this will result in a sharp reduction in hog receipts at Denver for the period for 1935 and for the greater part of 1936. He is of the opinion that the yearly receipts for the five years from 1936 to 1940 will not average as large as during the five years from 1929 to 1933, when the average receipts from the five States of Colorado, New Mexico, Wyoming, Kansas, and Nebraska were 611,400.

202. The supply of sheep at the Denver stockyards comes from a much wider area than do the supplies of either

cattle or hogs. These supplies originate largely in Colorado, Idaho, Wyoming, New Mexico, Utah, Oregon, California, and Texas. During the five years from 1924 to 1928, inclusive, there were on farms in these states on the average 19,572,000 sheep. The average receipts at Denver during this period were 1,965,000. For the five years from 1929 to 1933, inclusive, the average annual number of sheep on farms in these states was 25,023,000, and the average annual marketings at Denver were 2,443,000. In 1934 there were 25,891,000 head of sheep on farms and there were marketed at Denver 3,014,000. The witness is of the opinion that to the extent that probabilities favor a series of good feed years from 1935 to 1939 the number of lambs raised in these eight states can be expected to be as large as or larger from 1935 to 1939 than they were from 1929 to 1934. The witness is of the opinion that business and industrial conditions during the five years from 1935 to 1939 will be better than they were in the preceding five years, that this will result in better prices for lambs and wool, that this will bring better care of flocks, and tend to raise the percentage of the lamb crop. His conclusion is that lamb supplies in the eight states which furnish practically all of the Denver receipts will be smaller in 1935 than in 1934 and below the 5-year average from 1929 to 1933. The witness states that for the five years from 1936 to 1940 there is little reason to believe that the average will be below the 1929 to 1933 average, and it may be above.

203. It is a reasonable conclusion to be drawn from all the testimony that under ordinary conditions the revenue-producing cattle, calves, and sheep which will arrive at respondent's yards during the five years following the hearing under ordinary circumstances would exceed somewhat the receipts during the 5-year period from 1930 to 1934, and that the number of revenue-producing hogs arriving would be less than the number which arrived during that period.

204. During the period from 1930 to 1934, inclusive, the per capita consumption of hay per animal received at respondent's stockyard has been decreasing. This decline is

due to improved railroad service from the west to the River markets and Chicago and also the fact that cattle trucked into the market consume somewhat less hay than like cattle arriving by rail. Truck receipts have been increasing. It is a reasonable conclusion to be drawn from all the testimony, particularly that with respect to prospective receipts, that the consumption of hay at respondent's stockyard will not be greater during the next few years than it was during the past 4 or 5. During the 6-year period from 1931 to 1936, inclusive, the average consumption of hay was 8,770 tons a year. The 5-year average amount of sales, from 1932 to 1936, inclusive, was 8,413 tons a year. The 4-year average amount of sales, from 1933 to 1936, inclusive, was 8,484 tons a year. The 3-year average, from 1934 to 1936, inclusive, was 8,722 tons. The 2-year average, 1935 and 1936, inclusive, was 9,075 tons, and in 1936 the sales amounted to 8,736 tons. Respondent sells hay "on the fence" and "fed". For hay fed it makes an additional charge of 10c per hundred weight. During the 5-year period from 1930 to 1934, inclusive, the hay sold "on the fence" amounted to approximately 80 percent of the total hay sales, and that sold "fed", to approximately 20 percent of the total sales.

205. The number of head each species of livestock and the amount of different kinds of feed hereinafter used as a rate factor in determining a reasonable schedule of rates for respondent have not been arrived at by any purely mathematical computation, but by a consideration of the receipts which have been handled by respondent and all the testimony which has a bearing upon what the receipts of respondent are likely to be within the years immediately following those as to which specific and definite information is contained in the record.

206. On the basis of all the statistical information of record and all the opinion evidence of witnesses it is found that the following number of animals of each species and the following amounts of feed of the various kinds should be used

as a rate factor in arriving at reasonable rates to be prescribed for the rendition of services for which are charged by respondent rates, the reasonableness of which is being determined herein.

	Rail and "Plants"	Directs	Truck-ins	Resold and Reweighed for Purposes of Sale
Cattle	325,000	....	75,000	56,000
Calves	20,000	....	30,000	3,000
Hogs	25,000	145,000	225,000	250
Sheep	2,000,000	....	80,000	75,000
Horses and Mules	6,000	....		
Hay			170,000	cwt.
Corn			20,000	bu.
Bedding			18,500	bales
Miscellaneous grain and feed			150,000	lbs.

207. In the finding in the preceding paragraph as to the number of animals and the amount of hay, corn, bedding, and miscellaneous feed which are herein used as a rate factor in the determination of the reasonable rates prescribed herein, no prediction is made as to the exact number of head of livestock which respondent will receive in any particular year or as to the number which traders will handle in respondent's stockyard. The finding constitutes the number of head of livestock and the amount of hay, grain, bedding, and miscellaneous feed around which respondent's revenue-producing business will tend to fluctuate during the years immediately following the date of this order. The finding is based upon the statistical information of record, the opinions of witnesses, and a test of these opinions in the light of the receipts of livestock as determined in accordance with the reports of respondent filed monthly by it with the Department of Agriculture.

208. Respondent renders certain special stockyard services the charges for some of which are set forth in its schedule and for some of which the charges are not set forth.

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The most important of these sources of revenue is rental from the Exchange Building, which has been included in respondent's used and useful property, but for which no rate is set forth in its tariff. The rental paid by respondent's tenants in this building is a matter of contract. The income from this building and from other miscellaneous services constitutes a portion of its revenues available for paying all of its reasonable operating expenses, taxes, and a fair return upon the fair value of its property. These revenues do not vary greatly from year to year, and the amount of revenue anticipated for the years following the date of this order has been taken to be the average for the five years from 1930 to 1934. During this 5-year period the revenues received from these miscellaneous services were as follows:

	1930	1931	1932	1933
Exchange Bldg. rents	45,234.50	45,636.32	43,606.66	42,044.78
Dining room	1,809.89	2,579.48	2,012.32	1,742.07
Profits from company horse and mule barn	8,705.18	8,927.16	6,331.08	5,293.72
Manure sales	4,306.05	4,880.75	2,784.77	2,281.60
Drive-in delivery service	916.54	....	....	913.05
Branding, dehorning, etc.	16,005.61	10,429.40	4,735.27	6,838.76
Weighing	743.00	712.00	1,029.00	1,124.00
Rental stock hog plant	804.00	804.00	804.00	651.00
Auto truck washing	657.00	616.15	255.45	163.25
Yard pen rental	....	1,439.20	873.25	684.75
Dipping and spraying	2,973.71	3,542.23	3,168.46	881.57
Miscellaneous income	1,883.74	1,208.88	2,087.42	1,601.71
Total				

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K. UNREASONABLENESS OF EXISTING RATES

209. The amount of money hereinbefore found to be necessary to pay all of respondent's operating expenses, repairs, Federal income tax, depreciation, and a reasonable return on the fair value of respondent's property found to be used and useful is $528,071. A reasonable schedule of rates should produce this amount of gross revenue. The miscellaneous revenues derived from the rental of the Exchange Building and various other miscellaneous services the charges for which are either not set forth in respondent's schedule or have not been increased or reduced in the schedule of rates hereinafter prescribed as reasonable averaged $73,952 during the 5-year period from 1930 to 1934, inclusive. This $73,952, the $350,365 procurable from yardage, and the $105,800 procurable from profit on hay, grain, and bedding amount to $530,117. The revenues resulting from the application of the charges here under investigation against the number of animals hereinbefore found to be a rate factor and the average per-unit profit received on hay, corn, bedding, and miscellaneous feed during the 5-year period from 1930 to 1934, inclusive, and the miscellaneous stockyard revenues are in excess of the amount hereinbefore found to be necessary to pay all reasonable operating expenses and a fair return on the fair value of respondent's used and useful property. Moreover, respondent has not assessed a yardage charge against traders' livestock resold or reweighed for purposes of sale except that resold in the commission division. It is, therefore, found that respondent's tariff schedule here under investigation contains rates and charges which are unreasonable and unjustly discriminatory.

L. REASONABLE RATES

210. On the basis of all the foregoing findings and on the basis of the statistical information contained in the record, the opinion of the various witnesses who testified, and all other information in the record, it is found and concluded

that the following constitute and are the maximum reasonable rates and charges for the following services rendered by respondent, namely:

SECTION 1.

YARDAGE CHARGES:

Yardage will be charged as shown below:

(1) On livestock received and sold at these yards, also including livestock resold through commission firms.

(2) On livestock sold or contracted in the country to weigh and/or deliver at these yards.

(3) On livestock consigned direct to packers and slaughterers.

Rail:		
Cattle	$ .30	per head
Calves (under one year old)	.20	per head
Hogs	.12	per head
Sheep or Goats	.075	per head
Horses or Mules	.35	per head
Pure Bred Bulls	1.00	per head
Directs:		
Hogs	.06	per head
Resold and/or Reweighed for purposes of sale:		
Cattle	.15	per head
Calves (under one year old)	.10	per head
Hogs	.06	per head
Sheep or Goats	.03	per head
Horses or Mules	.35	per head
Pure Bred Bulls	1.00	per head
Trucked in or driven in:		
Cattle	.35	per head
Calves (under one year old)	.25	per head
Hogs	.14	per head
Sheep or Goats	.10	per head
Pure Bred Bulls	1.00	per head

Subject to exceptions hereinafter stipulated.

EXCEPTIONS:

On livestock consigned to the Denver market and offered for sale, but forwarded unsold to another market, yardage will be waived.

On through shipments, handled for railroads and not sold, yardage will be waived.

Cattle over 400 lbs. or over one year of age will take cattle yardage.

SECTION 2.

FEED, BEDDING, ETC.:

Hay (On fence) Current market price, F. o. b. stockyards, plus .... $ .50 per cwt.

Hay (Fed) Current market price, F. o. b. stockyards, plus .... .60 per cwt.

Misc. feed, Current market price, F. o. b. stockyards, plus .... .50 per cwt.

Corn, Current market price, F. o. b. stockyards, plus .... .45 per bu.

Bedding, Current market price, F. o. b. stockyards, plus .... .40 per bale

The charges on hay, corn, and miscellaneous feed and bedding shall be divisible by five and respondent shall amend its charges whenever the margin between the cost and the sale price varies five cents from the margin of profits set forth above. When feed other than that set forth above is desired it will be furnished if obtainable by special arrangement.

SECTION 3.

BRANDING, MARKING, CASTRATING, TIPPING, DEHORNING, ETC.:

Branding:

One iron	$ .08 per head
Each additional iron	.02 per head

Dehorning or Tipping:

Cows and Steers	.15 per head
Bulls or Stags	.50 per head

Castration	.50 per head
Ear Cropping	.05 per head
Wattling	.05 per head

DELIVERING CATTLE TO OR FROM BRANDING CHUTES:

Two cents per head each way additional will be charged for handling cattle to or from pens in the 100 to 2,500 series, inclusive. To and from cattle pens numbered above 2,500 series, no additional charge will be made.

The company is not responsible for loss or damage to livestock incident to any of the above operations.

SECTION 4.

DIPPING CHARGES:

Cattle	25c per head—minimum	$25.00
Calves	15c per head—minimum	25.00
Lambs	6c per head—minimum	25.00
Ewes	7c per head—minimum	25.00
Bucks	10c per head—minimum	25.00
Hogs	10c per head	

The charge for dipping includes use of facilities, material, and labor incident to that service.

The company is not responsible for loss or damage to livestock incident to dipping.

All dipping of livestock is subject to the supervision and regulations of the Bureau of Animal Industry of the United States Department of Agriculture.

SECTION 5.

DISINFECTING CHARGES:

Whenever the Bureau of Animal Industry or other governmental authority deems it necessary to disinfect any portion of this company's yards, occasioned by the movement of infected stock, the following will be collected from owner of such infected stock:

Pens, Single load	$2.50 each
Pens, Double load	4.00 each
Chutes	2.50 each
Alleys	Same proportions as pens.
Disinfecting stock cars	2.50 per car
Disinfecting stock wagons	.25 per wagon
Disinfecting stock trucks	.50 per truck

SECTION 6.

IMMUNIZATION AND VACCINATION:

Use of Facilities only:

Use of facilities for vaccinating cattle, 2c per head when the work of vaccinating is done in connection with branding, dehorning, or tipping.

When facilities are used exclusively for vaccination of cattle 5c per head will be charged.

Facilities for vaccinating and immunizing swine are leased to private parties but reasonable rates must be charged by them for this work.

The work of temperaturing and vaccinating swine is done under the supervision and regulations of the Bureau of Animal Industry, United States Department of Agriculture.

SECTION 7.

SPECIAL SALES:

Charges in connection with special sales will be made by mutual agreement.

SECTION 8.

BOARDING AND STABLING CHARGES:

Draft horses .... $ .75 per day
Saddle horses .... .75 per day
If owners call for and deliver saddle horses
at company barn .... .50 per day
Single feeds .... .35 each

Above charges include feeding of grain and hay, watering, bedding, cleaning, saddling, and/or harnessing.

Milch cows and saddle or other horses kept in cattle, sheep, and/or hog yards and not in regular movement through market .... $ .25 per day
5.00 per month

SECTION 9.

WEIGHING:

Weight will be furnished as a basis for freight charges on request of the Western Weighing and Inspection Bureau or railroads for a charge of $2.00 per draft.

SECTION 10.

MISCELLANEOUS:

Use of facilities and water for cleaning and washing trucks .... 50c each

211. The revenues to be derived from the application of the yardage rates and the unit profit on hay, grain, and bedding hereinbefore found to be a reasonable volume factor, and the miscellaneous revenues receivable from other of respondent's stockyard activities are as follows:

		Volume Used As A Rate Factor	Rates	Revenues Procurable
YARDAGE:				
Cattle,	Rail	325,000	$ .30	$ 97,500
	Truck-ins	75,000	.35	26,250
	Resales	56,000	.15	8,400
	Bulls	850	1.00	850
Calves,	Rail	20,000	.20	4,000

	Truck-ins	30,000	.25	7,500
	Resales	3,000	.10	300
Hogs,	Rail	25,000	.12	3,000
	Directs	145,000	.06	8,700
	Truck-ins	225,000	.14	31,500
	Resales	250	.06	15
Sheep,	Rail	2,000,000	.075	150,000
	Truck-ins	80,000	.10	8,000
	Resales	75,000	.03	2,250
Horses and mules		6,000	.35	2,100
Total yardage				$350,365
FEED, BEDDING, ETC.:				
Hay, cwt. on fence		136,000	.50	68,000
Hay, cwt. fed		34,000	.60	20,400
Corn, bu.		20,000	.45	9,000
Straw, bales		18,500	.40	7,400
Miscellaneous feed, lbs.		150,000	....	1,000
Total profit on feed, etc.				105,800
MISCELLANEOUS REVENUE				73,952
Total revenue procurable				$530,117

As hereinbefore pointed out, the revenues necessary to meet all reasonable operating expenses including repairs and provision for depreciation and to pay a fair return upon the fair value of respondent's property found to be used and useful are $528,071. The revenues produced by the schedule of rates found to be reasonable exceed this amount by $2,046.

ORDER

IT IS, THEREFORE, ORDERED that respondent, the Denver Union Stock Yard Company, on and after thirty days from the date of this order, cease and desist from demanding or collecting for yardage, feed, and bedding the rate or rates shown therefor in the schedule of rates and charges filed with the Secretary of Agriculture to become effective July 5, 1931, and designated and known as the Denver Union Stock Yard Company Tariff No. 3, and all supplements and amendments thereto.

IT IS FURTHER ORDERED that respondent, on and after thirty days from the date of this order, shall not publish, demand, or collect any rate or charge for the furnishing of any stockyard services in excess of the rates and charges

1932	1933	1934	Average
43,606.66	42,044.78	40,448.96	43,394.24
2,012.32	1,742.07	1,712.53	1,971.25
6,331.08	5,293.72	8,045.18	7,460.46
2,784.77	2,281.60	2,533.55	3,357.34
....	913.05	3,492.67	1,774.08
4,735.27	6,838.76	6,488.20	8,899.44
1,029.00	1,124.00	2,491.00	1,219.80
804.00	651.00	600.00	732.60
255.45	163.25	268.60	392.09
873.25	684.75	519.50	879.17
3,163.46	881.57	684.79	2,249.15
2,087.42	1,601.71	1,332.54	1,622.86
			$73,952.48

hereinbefore found and determined to be just and reasonable for the furnishing of such service.

IT IS FURTHER ORDERED that at least ten days prior to the thirtieth day from the date of this order respondent publish, give notice of, and file with the Secretary of Agriculture, in accordance with the Packers and Stockyards Act of 1921 and the regulations of the Secretary of Agriculture thereunder, a schedule effective on the thirtieth day from the date of this order showing all rates and charges for the stockyard services furnished by respondent at the Denver Union Stockyards, Denver, Colorado, and all rules and regulations changing, affecting, or determining such rates or charges and that no rate or charge so shown for any such stockyard service be in excess of the rate or charge hereinbefore determined to be just and reasonable for such service.

IT IS FURTHER ORDERED that a copy of this order be transmitted by registered mail to respondent.

IN WITNESS WHEREOF the Secretary of Agriculture has hereunto set his hand and caused the official seal of the Department of Agriculture to be affixed in the City of Washington, District of Columbia, this 17th day of February, 1937.

HARRY L. BROWN,

Acting Secretary
of Agriculture.

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